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ABSTRACT

This guide is intended to assist elementary and secondary schools as they plan compliance with the Americans with Disabilities Act (ADA), conduct required self-evaluation and transition plans, and make appropriate modifications. The eight chapters correspond with the regulations and include many worksheets and examples. Chapter 1 briefly discusses each of the ADA's titles, especially Title II which assures access to all programs and services provided by state and local government agencies. In Chapter 2 the emphasis is on the law's definition of a "qualified individual with a disability." Chapter 3 identifies action steps toward compliance and offers a three-phase process for completing self-evaluation planning. Chapter 4 reviews the general prohibitions against discrimination contained in Title II regulations, especially schools' obligation to provide a "free and appropriate public education." Chapter 5 explains ADA provisions concerning recruitment, hiring, and other employment-related issues. Program accessibility is the focus of Chapter 6. Chapter 7 explains Title II requirements for ensuring effective communication for persons with visual, hearing, and speech disabilities. Chapter 8 reviews the enforcement procedures for Title II and the remedies available if an institution is determined not to be in compliance. The last section identifies relevant sources of information. (DB)

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ADA

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT:

A Self-Evaluation Guide for Public Elementary and Secondary Schools

EC305179

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This Guide is intended to serve as a resource to assist school districts in conducting their self-evaluations under the Americans with Disabilities Act (ADA). This Guide was developed by the U.S. Department of Education's Office for Civil Rights in cooperation with Adaptive Environments, Inc. Funding was provided by the National Institute on Disability and Rehabilitation Research (NIDRR) as part of its ADA technical assistance initiative. The Civil Rights Division of the U.S. Department of Justice provided support for dissemination of the Guide. The Guide reflects the interpretations of the U.S. Department of Education's Office for Civil Rights, to which the U.S. Department of Justice has delegated responsibility for ensuring that public school systems are in compliance with Title II of the ADA. It has been reviewed by the Civil Rights Division of the U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, and the U.S. Department of Education's Office of the General Counsel and Office of Special Education and Rehabilitative Services. It is important to note that while the Guide reflects the interpretations of the U.S. Department of Education's Office for Civil Rights, the Title II regulation must be consulted for a complete understanding of the legal requirements of Title II. This Guide is available in alternative formats upon request.

Additional copies of the Guide may be purchased from the U.S. Government Printing Office, (202) 512-1800.

For further technical assistance in understanding the responsibilities of public school systems under Title II of the ADA, public school officials can contact the U.S. Department of Justice's ADA Information Line at (800) 514-0301 (voice), (800) 514-0383 (TDD). ADA specialists are available to provide technical assistance 10 A.M. to 6 P.M. eastern time Mondays through Fridays, except Thursdays when the hours are 1 P.M. to 6 P.M. Public school officials can also contact the ADA National Access for Public Schools Project, funded by NIDRR, at Adaptive Environments, Inc., (800) 893-1225 (voice/TDD).

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT:

A Self-Evaluation Guide for Public Elementary and Secondary Schools

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Chapter One. Introduction to Title II

This chapter explains the goals of the ADA and briefly discusses each of its titles, noting entities covered by each Title. It also comments on the relationship between Section 504 and Title II and clarifies some of the key differences between them.

Chapter Two. Who is Protected Under Title II?

A critical definition — a "qualified individual with a disability" — is discussed. Illustrations drawn from education, employment, and other contexts illuminate the question of who meets or does not meet definition criteria. Exclusions from this definition are highlighted. The chapter also gives examples of those covered because of their "association" with qualified individuals with disabilities and includes a discussion of when they are entitled to protection under the law.

Chapter Three. Planning for Compliance

This chapter will help you plan your school system's approach to ensuring ADA compliance. It identifies the action steps you need to take to comply, the required timelines for completing each action step, and the principles of successful compliance. A three-phase process for completing self-evaluation planning is shown, beginning with the planning phase and proceeding through the self-evaluation to the execution of modifications. The chapter concludes with an expanded discussion of the planning process and how it might be structured in public school systems such as yours.

Worksheets provide a structure to assist the ADA coordinator in tracking progress through the start-up phase; forming the compliance team; developing a comprehensive list and summary of programs, activities, and services; and defining and monitoring the compliance process.

Chapter Four. General Nondiscrimination Requirements

This chapter reviews the general prohibitions against discrimination contained in the Title II regulation. The obligations of a school district specifically described under Section 504 to provide a "free appropriate public education" (FAPE) to school-age individuals with disabilities, regardless of the nature or severity of their disabilities, are incorporated in the general provisions of Title II that are discussed in this chapter. The chapter provides an overview of the FAPE requirements that are part of the general prohibitions against discrimination section of Title II. Basic equal opportunity requirements are highlighted. The chapter explains what is meant by "reasonable modifications" to policies, practices, or procedures, which the Title II regulation requires when appropriate. It explains specific requirements such as those related to eligibility criteria, methods of administration, contractor selection, and the selection of sites and locations. It also discusses the application of the Title II provision concerning personal devices and services.

Worksheets provide a structured framework for evaluating the school district's policies and procedures related to nondiscrimination, to identify those for which "reasonable modifications" are required. School systems may use the worksheets to summarize their programs, activities, and services to facilitate review, to collect and document their policies and practices, to determine aspects of programs to be examined, to document needed changes to policies and practices, and to solicit comments on findings.

Chapter Five. Requirements for Employment Policies and Practices

This chapter explains ADA provisions for the full range of employment issues and activities. It addresses recruitment, hiring, medical inquiries and examinations, on-the-job benefits, opportuni-

PREFACE

HOW THIS GUIDE CAN HELP YOU

Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools is designed to help public school systems comply fully with the provisions of Title II of the Americans with Disabilities Act of 1990 (ADA). Written primarily for designated ADA coordinators in straightforward, non-legalistic language, the Guide presents a comprehensive process for:

- planning procedures to ensure ADA compliance,
- conducting the self-evaluation and transition plan required under the ADA, and
- making modifications where needed.

The Guide uses examples throughout to show how regulations would apply in specific instances. Worksheets outline a structured process for planning, evaluating, and documenting your compliance activities.

No matter what stage your public school system has reached in regard to ADA compliance, the Guide will be of assistance. If you have not completed, or have only partially completed, your required self-evaluation and transition plan, the Guide will assist you in identifying necessary steps to achieve compliance. If you have recently completed your self-evaluation and transition plan, the Guide may be used as a reference and resource to help you conduct periodic evaluations to ensure continued compliance as new programs are introduced and existing ones are modified.

If your public school system completed a self-evaluation under Section 504 of the Rehabilitation Act of 1973 (Section 504) when it was required years ago, but has not updated it since the passage of the ADA, the Guide will assist in identifying key programs, policies, and practices that were not subject to the Section 504 self-evaluation, and highlight differences between Title II and Section 504. Note that even when updates to the Section 504 self-evaluation are not legally required, it may be in the best interest of the public school system to review its entire program for compliance. Changes in programs and functions inevitably occur over the years. It is also advisable to revisit actions planned to comply with Section 504 in order to determine which of them were completed and to assess their effectiveness.

HOW THE GUIDE IS STRUCTURED

The eight chapters of the Guide are designed to correspond fairly closely with the regulations, though the order of topics is occasionally modified to improve readability. Worksheets are included at the end of Chapters Three through Seven to assist you in the self-evaluation process; these are intended as basic guides that should be adapted to suit your school system's specific requirements and administrative structure. The following summarizes the content of each chapter to assist you in locating the information you need.

ties for advancement, and training opportunities. Special attention is given to the requirement to provide "reasonable accommodation" for qualified applicants and employees with disabilities. This chapter introduces and illustrates the concept of "undue hardship." The use of contracts or other relationships with external agencies in the hiring process or in other aspects of the employer-employee relationship is discussed. The chapter concludes with examples of defenses related to charges of employment discrimination.

Worksheets are provided to assist you in evaluating all aspects of employment relationships in your school system to ensure compliance. The worksheets specifically address advertising, application forms, interviews, medical examinations, health insurance and other benefits, personnel policies, job tests, and reasonable accommodations.

Chapter Six. Program Accessibility

This chapter describes the program accessibility requirements of Title II and highlights major similarities and differences between the program accessibility requirements of Section 504 and Title II. The chapter clarifies requirements for accessibility both in existing facilities and in new construction. It discusses and illustrates options for making programs accessible, addressing both administrative and architectural solutions. In addition, it clarifies relevant regulatory provisions related to leased space and historic properties.

Worksheets structure the review process by providing forms for use in conducting the building inventory and noting inaccessible features, developing nonstructural solutions to providing access, and identifying the architectural features that must be addressed in the transition plan.

Chapter Seven. Requirements for Effective Communication

This chapter explains and illustrates the Title II requirements for effective communication for persons with visual, hearing, and speech disabilities. Major similarities and differences between the requirements of Title II and Section 504 for communication are also presented. The chapter offers a brief discussion of a variety of auxiliary aids and services that are available to ensure effective communication; these include assistive listening systems, voice output computers, and interpreter services. The requirements regarding telecommunication devices for the deaf (TDDs) are also explained, as are the requirements for telephone emergency services and signage. Finally, the chapter explains the concepts of "fundamental alteration" and "undue burden."

Worksheets presented at the end of the chapter are designed to help conduct the self-evaluation. School systems can use them to assess their current capacity to provide effective communication to persons with disabilities and to support the development of an action plan to achieve compliance.

Chapter Eight. Compliance Procedures

This chapter reviews the enforcement procedures for Title II and the remedies available in the event that institutions are determined not to be in compliance. The chapter then outlines the process for filing complaints and addresses miscellaneous provisions related to compliance and enforcement, such as those governing attorney's fees.

Resources

This section identifies sources of information and assistance on particular issues related to the Title II self-evaluation.

Index

The comprehensive index may be used to locate all discussions of specific subjects related to the ADA and Section 504 in this Guide.

CITATIONS

This Guide contains numerous references to the Code of Federal Regulations (C.F.R.), the multi-volume codification of regulations issued by the federal government. A citation "28 C.F.R. § 35.103" means Title 28 of the Code of Federal Regulations, Part 35, Section 103.

The Guide also contains references to the United States Code (U.S.C.), the multi-volume codification of statutes, or laws, passed by Congress. A citation "42 U.S.C. § 12102" means Title 42 of the United States Code, Section 12102.

CHAPTER ONE

INTRODUCTION TO TITLE II

BACKGROUND OF THE ADA

The Americans with Disabilities Act of 1990 (ADA) became law on July 26, 1990, after approximately five years of intensive work on the part of legislators, persons with disabilities, and concerned citizens. It is arguably the most comprehensive formulation of the rights of people with disabilities in the history of the United States or of any other nation.

The ADA's impact can hardly be overestimated. More than forty million Americans have some kind of physical, sensory, cognitive, or mental disability. Virtually every individual and every family in the United States is touched at one time or another by the experience of disability — their own or that of someone close to them. The ADA's far-reaching provisions for employment, state and local government, transportation, public accommodations, and telecommunications, therefore, have the potential to benefit almost everyone.

AN OVERVIEW OF THE ADA

The ADA requires nondiscriminatory policies in institutions that serve the public, whether publicly or privately owned. In each area, it seeks to ensure that persons with disabilities are afforded the same rights as other American citizens. The ADA contains five titles.

Title I. Equal Employment Opportunity for Individuals with Disabilities

This title is designed to remove barriers that would deny qualified individuals with disabilities access to the same employment opportunities and benefits available to others without disabilities. Its provisions apply to employers with 25 or more employees (effective July 26, 1992) and to those with 15 or more employees (effective July 26, 1994).

Title II, Subpart C, of the ADA addresses employment discrimination, but references Title I and Section 504 for specific requirements concerning employment. However, the Rehabilitation Act Amendments of 1992 amended Section 504 to incorporate the employment standards of Title I. As a result, *all public school districts, regardless of the number of employees, are subject to Title I*

standards. The employment provisions of the ADA are enforced primarily by the Equal Employment Opportunity Commission (EEOC). Note, however, that the Department of Education also investigates some Title II employment complaints. (See Chapter Eight, *Compliance Procedures*.)

Title II. Nondiscrimination on the Basis of Disability in State and Local Government Services

This title prohibits discrimination on the basis of disability by public entities. It is divided into two parts, the first of which deals with state and local governments and the second with public transportation. Provisions related to state and local governments are similar to those previously set forth under Section 504 for public and private entities that receive federal funding; Title II extends that nondiscrimination mandate to *all* public entities, regardless of funding status. The U.S. Department of Education's (ED) Office for Civil Rights (OCR) enforces Title II in public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries.

Title III. Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

This title prohibits discrimination on the basis of disability by private entities in places of public accommodation (such as hotels, cafeterias, golf courses, private schools, day care centers, health clubs and conference centers). Title III requires that all *new* places of public accommodation and commercial facilities be designed and constructed so that they are readily accessible to, and usable by, persons with disabilities. It also requires that private entities that conduct examinations or courses for professional and trade licensing or certification provide equal opportunity to persons with disabilities.

Title IV. Telecommunications

This title requires telephone companies to have developed interstate and intrastate telephone relay services in every state by July 26, 1993. This third-party system allows people with speech and hearing impairments who use TDDs to communicate with individuals who do not have this equipment.

Title V. Miscellaneous Provisions

The final title contains a variety of provisions relating to the ADA as a whole, including its relationship to other laws and its impact on insurance providers and benefits. It also states that individuals cannot be required to accept accommodations and services

against their will; clarifies the fact that states are not immune from actions relating to the ADA; prohibits retaliation and coercion against those exercising or seeking to exercise their rights under the ADA; and summarizes remedies and procedures. It establishes the role of federal agencies with respect to enforcement and technical assistance related to the ADA and extends coverage to the U.S. Congress. Where relevant to public entities, these provisions are incorporated in the Title II regulation.

THE SCOPE OF TITLE II

With the passage of the ADA, people with disabilities are, for the first time, assured of access to *all* programs and services provided by state and local government agencies. Previously, under Section 504 of the Rehabilitation Act of 1973, as amended, only those public entities that receive federal funding were explicitly prohibited from discriminating on the basis of disability. But Title II prohibits *all* public entities — even those completely independent from federal funding — from discriminating against people with disabilities.

Title II is divided into two subtitles. This Guide focuses only on Subtitle A, which is implemented by the Department of Justice's Title II regulation at 28 C.F.R. Part 35. Subtitle B covers public transportation and is implemented by the Department of Transportation's regulation. Subtitle B provisions will not be addressed here. The use of the term "Title II" throughout this Guide actually refers only to Subtitle A.

28 C.F.R. § 35.102 Application

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by Subtitle B of Title II (42 U.S.C. 12141) of the ADA, they are not subject to the requirements of this part.

The obligation to comply with Title II extends to all public entities, including:

- any state or local government;
- any department, agency, special purpose district, or other instrumentality of a state or local government; and
- certain commuter authorities as well as AMTRAK.

All public school systems are required to comply with Title II because they are considered "instrumentalities" of the state government.

All programs, activities, and services of public school systems must be in compliance with Title II. Examples of activities covered include:

- the operation of all services and programs offered by the entity;
- all aspects of the employment relationship; and
- services carried out by contractors.

Title II covers, for example, any public entertainment or lecture series your school system offers, after-school activities and social events offered by the school system, parent–teacher meetings, classroom activities, field trips or other special events, and all services provided for students or staff. Services provided by any private contractors on behalf of the school system must also comply fully with relevant provisions of Title II.

TITLE II AND OTHER LAWS

28 C.F.R. § 35.103 Relationship to Other Laws

(a) ***Rule of interpretation.*** *Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.*

(b) ***Other laws.*** *This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.*

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in any program or activity of state or local governments that receive federal funds. Title II of the ADA extends this prohibition to the full range of state or local government services, programs, or activities regardless of whether they receive any federal funding. With some exceptions, Title II does not impose any major new requirements on school districts. This is true because the requirements of Title II and Section 504 are similar, and because virtually all school districts receive federal assistance and have been required to comply with Section 504 for many years. (ED's Section 504 regulation, which is enforced by ED's OCR, applies to preschool, elementary, secondary, post-secondary, vocational, and adult education programs and activities, as well as other programs and activities that receive or benefit from federal financial assistance.)

The ADA statute clearly specifies that unless Title II states otherwise, Title II may not be interpreted to apply a lesser degree of protection to individuals with disabilities than is provided under Section 504. In the area of education, the federal government has stated many of the nondiscrimination requirements related to individuals with disabilities in more specific detail under Section 504 than under Title II. The reason for this difference is that the regulation issued to implement Title II was written to cover *all* state and local government entities regardless of their function, whereas the regulation issued under Section 504 in 1977 was written to describe specific requirements applicable to public school districts, as well as certain other types of recipients of federal funds in the areas of education, health, and social services [34 C.F.R. Part 104; 45 C.F.R. Part 84]. Note, however, that if a rule issued under Section 504 imposes a lesser standard than the ADA statute or regulation, the language in the ADA statute or regulation controls. The chapters that follow will not only point out any differences between the requirements of Section 504 and Title II, but also highlight the more specific requirements of Section 504.

The most important activity of any school district is providing elementary and secondary education to students. A school district must ensure that students with disabilities are not excluded from participation in, or denied the benefits of, its

services, programs, and activities. It must also ensure that they are not subjected to discrimination by the school system [28 C.F.R. § 35.130]. Equal educational opportunity to elementary- and secondary-school-age individuals with disabilities is achieved through the provision of a free appropriate public education (FAPE) to each qualified student with a disability in a school system, regardless of the nature or severity of the person's disability. The requirements regarding the provision of FAPE are detailed in the Section 504 regulation, but are incorporated in the general nondiscrimination provisions of Title II [28 C.F.R. § 35.130; 28 C.F.R. § 35.103(a); (see 34 C.F.R. §§ 104.31-104.37)].

Because of this specific responsibility shared by all public school systems, in some cases it will be necessary to evaluate the school district's responsibilities under Title II with respect to individuals entitled to FAPE in a manner different from the evaluation of Title II responsibilities with respect to other individuals with disabilities (such as employees, parents of students, and the general public). This approach, of course, is consistent with Section 504, under which determinations regarding nondiscrimination in providing FAPE to school-age children are based on different factors than other types of determinations. Specific requirements related to FAPE will be discussed further in the chapters that follow.

Title II, like Section 504, requires covered entities to evaluate current policies and practices. However, the ADA does not require self-evaluations for all your school district's programs and activities. If your school system completed a self-evaluation as part of its obligations under Section 504, only programs not previously reviewed, or changes in programs and functions, must be evaluated. However, many Section 504 self-evaluations were conducted years ago; actions taken to comply with Section 504 may not have been fully implemented or may no longer be effective, and the scope of the covered program or activity may have been more limited than subsequently required by statute. Therefore, the U.S. Department of Justice and the U.S. Department of Education strongly encourage public school systems to conduct a comprehensive review of *all* current programs. For example, fourteen years ago computers and computer technology would not have been a major part of most school systems' educational services. Now, however, this technology is of tremendous importance to most public schools and should be examined afresh in light of the Title II requirements.

Similarly, the transition plan required by Title II must cover structural changes to facilities to achieve program accessibility in parts of a school system's operation not covered by the Section 504 transition plan. If there are structural or other changes identified in your previous transition plan for Section 504 that have not been completed, these changes should be included as priorities in the Title II transition plan.

Note also that the ADA does not in any way relieve public school systems from complying with any other state, local, or federal laws that bear on the rights of individuals with disabilities and that provide protection at least equal to that given under the ADA.

THE BUILDING BLOCKS OF TITLE II

The regulation implementing Subtitle A of Title II is divided into seven Subparts: (1) general, (2) general requirements, (3) employment, (4) program accessibility, (5) communications, (6) compliance procedures, and (7) designated agencies. The basic content of each of these will be noted briefly below. Not all of the distinct provisions of each section will be included in this brief overview, however. For more detailed information, consult the chapter in which that part is discussed (indicated at the end of each section summary).

General (28 C.F.R. §§ 35.101–35.107)

This Subpart provides basic background on the law's purpose, its relationship to other laws, and key definitions essential to its interpretation. It also presents the requirement that public entities conduct a self-evaluation to determine whether they are in compliance, provide notice regarding the rights and protections afforded by Title II, and, if the entity employs over 50 persons, designate a responsible employee to coordinate the entity's compliance with Title II and establish a grievance procedure to handle complaints.

> *This portion of the Title II regulation is addressed primarily in this* **Introduction** *(purpose, application, and relationship to other laws); in* ***Chapter Two, Who is Protected Under Title II*** *(definitions); and in* ***Chapter Three, Planning for Compliance*** *(designation of responsible employee, notice, grievance procedures, self-evaluation, and transition plan).*

General Requirements (28 C.F.R. §§ 35.130–35.135)

This Subpart of the Title II regulation addresses the basic mandate of the ADA: that is, that no qualified individual with a disability shall be excluded from participation in, or denied access to, programs or activities; denied benefits or services; or be subjected to discrimination by any public entity. Specifically, this section discusses the general prohibitions against discrimination, and provisions regarding the illegal use of drugs, smoking, maintenance of accessible features, retaliation or coercion, and personal devices and services.

Unlike Title II, the Section 504 regulation provides separate coverage for preschool, elementary, secondary, and adult educa-

tion programs; post-secondary education programs; and health, welfare, and other social service providers under separate subparts of the Section 504 regulation. The general nondiscrimination provisions under Title II are construed to cover discriminatory conduct specifically prohibited under these subparts of the Section 504 regulation. Specific Section 504 requirements regarding elementary and secondary education programs, which are addressed throughout this Guide as they arise, should be kept in mind as you review your school system's programs, policies, and practices.

General requirements are discussed in ***Chapter Four, General Nondiscrimination Requirements.***

Employment (28 C.F.R. § 35.140)

Title II addresses employment discrimination, but references Title I and Section 504 for specific requirements concerning employment. As mentioned on page 1, the Rehabilitation Act Amendments of 1992 amended Section 504 to incorporate the employment standards of Title I. Therefore, *all public school districts are subject to Title I standards.*

The basic mandate of Title I is that an employer cannot discriminate against qualified individuals with disabilities in its employment policies and practices. For example, employers are required to make reasonable accommodations for qualified applicants and employees with disabilities upon their request, unless the employer can prove that providing the accommodation would result in an undue hardship. The Title I regulation prohibits discrimination in all aspects of employment, including recruitment, advertising, the application process, job classifications, position descriptions, testing, interviewing, hiring, assignments, evaluation, discipline, medical examinations, compensation, promotion, on-the-job training, leave, tenure, seniority, lines of progression, benefits (such as health insurance), social and recreational programs, layoff/recall, and termination.

Because public school systems that receive federal funds have previously had to comply with the old Section 504 employment standards, it is important to note that there are a few differences between Title I and Section 504 as it was interpreted prior to the Rehabilitation Act Amendments of 1992. Title I contains several provisions that were not previously included in the Section 504 regulation (e.g., provisions prohibiting discrimination on the basis of relationship or association and provisions regarding employee medical examinations and inquiries). Title I also provides several new definitions that were not previously provided in the Section 504 regulation, but that are based on Section 504 case law (e.g., definitions of "essential functions" and "direct threat").

Chapter Five, Requirements for Employment Policies and Practices, *provides a review of ADA employment requirements and highlights significant differences between Title I requirements and the employment standards of Section 504 prior to the Rehabilitation Act Amendments of 1992.*

Program Accessibility (28 C.F.R. §§ 35.149–35.151)

This Subpart of the Title II regulation addresses the requirement that public entities ensure that their programs and activities are accessible to, and usable by, persons with disabilities. The Title II regulation contains standards for existing facilities, as well as for new construction and alterations of facilities.

Although the general standards for accessibility under Title II and Section 504 are similar, there are significant differences in some areas that school districts need to consider as they conduct their self-evaluation (e.g., relevant time frames for existing facilities; actions resulting in a fundamental alteration of a service, program, or activity, or undue financial or administrative burdens; historic properties; transition plans; and new construction or alterations). School districts should pay particular attention to differences in relevant time frames for "existing" construction or new construction.

Chapter Six, Program Accessibility, *provides a review of the Title II requirements regarding program accessibility, as well as a discussion of the similarities and differences between Title II and Section 504 concerning program accessibility.*

Communications (28 C.F.R. §§ 35.160–35.164)

This Subpart of the Title II regulation addresses the requirement that public entities ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. The Subpart addresses the responsibility of a public entity to furnish auxiliary aids and services. In addition, it sets forth requirements for providing TDDs, telephone emergency services, and information and signage. While the Section 504 regulation does contain a number of nondiscrimination requirements that, taken as a whole, result in an obligation to provide effective communication, the Title II regulation contains specific requirements that are not provided in the Section 504 regulation (e.g., requirements for TDDs and telephone emergency services).

Chapter Seven, Requirements for Effective Communication, *reviews Title II requirements for effective communication and discusses differences between the requirements of Title II and Section 504 with respect to communication.*

Compliance Procedures (28 C.F.R. §§ 35.170–35.178)

This Subpart establishes the administrative procedures for enforcement of Title II. It also states provisions related to attorney's fees, alternative means of dispute resolution, the effect of the unavailability of technical assistance, and state immunity.

Provisions of this Subpart of the Title II regulation are discussed in ***Chapter Eight, Compliance Procedures.***

Designated Agencies (28 C.F.R. § 35.190)

This Subpart designates the federal agencies responsible for investigation of Title II complaints, distributing enforcement responsibilities for particular public entities among eight federal agencies. As discussed on page 2, the Department of Education is designated to enforce Title II in public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools, for which the Department of Health and Human Services is responsible), and public libraries. Complaints related to employment are referred to the Equal Employment Opportunity Commission (EEOC) or are reviewed by the Office for Civil Rights in the U.S. Department of Education.

Provisions of this Subpart of the Title II regulation are discussed in ***Chapter Eight, Compliance Procedures.***

CHAPTER TWO

WHO IS PROTECTED UNDER TITLE II?

This chapter will examine the issue of who is entitled to protection under Title II of the ADA. The regulation prohibits discrimination against any "qualified individual with a disability." Determining whether a particular individual is protected by Title II begins with understanding what is considered a disability under Title II (and what is not). Next, the chapter addresses the question, "Who is a *qualified* individual with a disability?" It then identifies other persons covered by the ADA because of their association with persons who have disabilities or because they have been retaliated against for their participation in Title II activities. Finally, it discusses circumstances that would exclude someone from coverage as a person with a disability.

WHO IS A PERSON WITH A DISABILITY?

People commonly refer to disabilities or disabling conditions in a broad sense. For example, poverty or lack of education may impose real limitations on an individual's opportunities. Likewise, being only five feet in height may prove to be an insurmountable barrier to an individual whose ambition is to play professional basketball. Although one might loosely characterize these conditions as disabilities in relation to aspirations of the particular individual, the disabilities covered by Title II are limited to those that meet the ADA's legal definition — *those that place substantial limitations on one or more of an individual's major life activities.*

A Three-Pronged Definition

The ADA uses a three-pronged definition of disability.

For the purposes of coverage under the ADA, a person with a disability is defined as an individual who meets any of the three conditions outlined in the statute cited on the right. Each component of the definition is explained in the regulations. Note that the ADA's definition of a person with a disability is essentially the same as the definition of a person with a disability under Section 504.

42 U.S.C. § 12102(2)

*The term **disability** means, with respect to an individual—*

(A) *a physical or mental impairment that substantially limits one or more of the major life activities of such individual;*

(B) *a record of such an impairment; or*

(C) *being regarded as having such an impairment.*

Persons with Physical or Mental Impairments

The first prong of the definition covers those persons who currently have actual physical or mental impairments that substantially limit one or more major life activities. The focus of

this part is on the individual, to determine if he or she has a substantially limiting impairment.

28 C.F.R. § 35.104(1)(i)
The phrase ***physical or mental impairment*** *means—*

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

What is an impairment? The phrase *physical or mental impairment* has been defined by the provision of the regulation cited on the left to include physiological conditions that affect body systems as well as mental or psychological disorders. Title II provides only representative examples of conditions, contagious and noncontagious diseases, or infections that would constitute physical or mental impairments; the list is not meant to be exhaustive. Some examples provided include: epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction, HIV disease (symptomatic or asymptomatic), tuberculosis, alcoholism, and orthopedic, visual, speech and hearing impairments.

What is not an impairment? Simple physical characteristics such as left-handedness, skin color, or age, or uncomplicated pregnancy do not constitute physical impairments and therefore cannot be considered disabilities under Title II. Similarly, disadvantages attributable to environmental, cultural, or economic factors are not the type of impairments covered by Title II. The definition also does not include common personality traits such as poor judgment or a quick temper, where these are not symptoms of a mental or psychological disorder. The ADA also excludes several other conditions. These are discussed later in this chapter.

EXAMPLES:
Are these conditions impairments?

1. *Jennifer is a junior high school math teacher in the third trimester of her pregnancy. Her pregnancy has proceeded well, and she has developed no complications. Jennifer does not have an impairment. An uncomplicated pregnancy, by itself, is not an impairment.*

2. *Mark, the chair of the history department at his high school, is frequently impatient with his colleagues. He loses his temper with other employees as well as students, sometimes shouting at his subordinates or angrily questioning his principal's decisions. His colleagues think he is rude and arrogant, and they find it difficult to work with him. On the basis of the information provided, Mark does not have an impairment. Personality traits such as impatience, quick temper, and arrogance are not impairments in and of themselves.*

3. *Sophia, a high school senior, is the oldest of six children. Her mother, a single parent, cleans houses for a living, and barely makes enough money to feed and clothe the family. Sophia wants to go to college, and in order to do*

so she works long hours after school and on weekends at a fast-food restaurant to make money. Sophia's heavy work schedule interferes with her studies, but she feels she has no choice. Although Sophia's economic situation does put her at a disadvantage, it is not a mental or physical impairment.

Substantial limitation of major life activities. Another key concept under the first prong of the definition is that an impairment must substantially limit a major life activity to constitute a disability. The phrase *major life activities* refers to functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, working, and learning [28 C.F.R. § 35.104]. Note that *learning is considered a major life activity.* If a student's impairment substantially limits his or her ability to learn, then that student has a disability under Title II of the ADA.

28 C.F.R. § 35.104(2) *The phrase* ***major life activities*** *means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.*

The above list of major life activities is not meant to be exhaustive. Specific activities that are equivalent to those listed in terms of their impact on, or importance to, an individual's life also may be considered major life activities. For example, other major life activities would include sitting, lifting, and reaching. Generally, there is little controversy about what constitutes a major life activity. They are understood to include "those basic activities that the average person in the general population can perform with little or no difficulty" [Appendix to 29 C.F.R. Part 1630, at 395 (1994)].

In contrast, determining whether or not an impairment *substantially limits* a major life activity is more difficult and must be done on an individual basis. To be considered a disability, an impairment must significantly restrict the performance of a major life activity in comparison to most people in terms of:

- the *conditions* under which the activity is performed;
- the *manner* in which the activity is performed; or
- the *duration* of performance possible for the individual.

The finding that an impairment poses a substantial limitation is not assumed simply because an impairment exists; it is shown by determining the impact of that impairment on a particular individual. The factors that are considered in determining whether a person's impairment substantially limits a major life activity are:

- its nature and severity;
- how long it will last or is expected to last; and
- its permanent or long-term impact or expected impact.

In determining whether an impairment substantially limits a major life activity, one should *not* take into account any corrective devices or reasonable accommodations that might reduce the

limiting effect of the impairment. For instance, a person with a hearing impairment that severely limits his or her hearing is an individual with a disability, even if that person's hearing significantly improves when he or she wears a hearing aid.

EXAMPLES:
Do these impairments substantially limit a major life activity?

1. *Li is a third-grade student who had behavior problems and was a low achiever in first and second grades. In her current class, Li is easily distracted, frequently inattentive, and often disruptive. She generally fails to follow directions, and she has difficulty focusing on and completing tasks. Her academic performance overall is below grade level, and she is close to failing reading and math. Li's teacher referred her for evaluation by the school district's placement team. Li was diagnosed as having attention deficit disorder (ADD), which has an adverse impact on her ability to learn. Li has a disability under the ADA.*

2. *Greg is a third-grader who was generally well behaved and a good student in first and second grades. Although he often daydreams, shifts from one activity to another, and occasionally loses his work, Greg still manages to do well on his in-class and homework assignments. Because of his daydreaming and inattentiveness, his mother decided to have him evaluated by a private physician. The physician noted that Greg displays some behaviors similar to those of children with ADD, but on a more limited and less severe basis. However, Greg's academic performance seems not to be significantly affected. Even if Greg does have ADD, he does not have a disability under the ADA, since his ability to learn is not substantially limited. Thus, there is insufficient justification for evaluating Greg for special education and related services.*

3. *Juan was injured in a traffic accident. His legs are permanently paralyzed. Juan is considered to be a person with a disability because he has a physical impairment that substantially limits the major life activity of walking.*

4. *Tom, a seventh-grade math teacher, has an allergy to certain tree pollens that makes him break out in hives if he is outside during certain times of the year. The hives are quite uncomfortable and make it hard for Tom to enjoy outdoor activities during pollen season. Although the hives are annoying and limit Tom's enjoyment of certain activities, Tom's allergy does not substantially limit any of his major life activities.*

5. *Mei, a first-grade student, has severe asthma. During an asthma attack, Mei has great difficulty in breathing. She uses an inhalation spray and needs inhalation therapy three times a day. Mei has a disability because her asthma substantially limits her ability to breathe.*

For the purpose of employment, it is critical to give special attention to what it means to be *substantially limited in the major life activity of working*. This phrase is understood to mean "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities" [29 C.F.R. § 1630.2(j)(3)(i)]. It does not refer to the inability to perform only a particular job or a very specialized job, nor does it require the complete inability to work.

Factors to be considered in determining whether an employee or applicant is substantially limited in the major life activity of working include:

1. the type of job from which the individual has been disqualified because of the impairment;

2. the geographical area in which the person may reasonably be expected to find a job;

3. the number and types of jobs using training, knowledge, skills, or abilities similar to those required for the job from which the individual has been disqualified (the *class of jobs*) within the geographical area; and

4. the number and types of jobs in the area that do *not* involve similar training, knowledge, skills, or abilities from which the individual also is disqualified because of the impairment. (This factor spans a *broad range of jobs in various classes*) [29 C.F.R. § 1630.2(j)(3)(ii)].

If an individual is substantially limited in any *other* major life activity (e.g., walking or seeing) it is not necessary to determine whether the person is limited in the major life activity of working; he or she is already protected by the ADA as a person with a disability. Thus, an elementary school teacher who is blind is an individual with a disability because the blindness substantially limits his or her ability to see. For purposes of determining whether that teacher is an individual with a disability, it is not necessary to determine if the blindness substantially limits that teacher's ability to work.

Note that a person who is substantially limited in his or her ability to work must still be a "*qualified* individual with a disability" in order to be covered by the ADA. (See Chapter Five,

Requirements for Employment Policies and Practices, for a more detailed discussion of employment discrimination.)

Frequently, school systems must determine whether an individual with a temporary impairment is afforded the protections of Title II. While the definition of disability does not exclude temporary impairments, temporary impairments must be assessed on a case-by-case basis to determine whether the impairment substantially limits a major life activity. Therefore, the key factors to be considered in determining whether the impairment satisfies the first prong of the definition are, as discussed on page 13, the *extent* of the impairment, the *duration* (or expected duration) of the impairment, and the *impact* of the impairment.

EXAMPLES:
Should these temporary impairments be considered a disability?

1. *Nancy is a high school drama teacher who has laryngitis. It is very painful for her to speak, and she cannot talk above a whisper when she does speak. Her physician has prescribed medication for her, has instructed her to drink plenty of fluids, and has advised her to stay home from work. She should be fully recovered within three weeks. Nancy does not have a disability. Although the laryngitis significantly restricts her ability to speak, it does so only on a very short-term basis and has no long-lasting or permanent effects on Nancy.*

2. *Neil, an administrative assistant for a city school system, was in a skiing accident. He had a concussion, broke over 30 facial bones, and is temporarily paralyzed on his left side. Neil's injuries will require extensive long-term rehabilitation. His prognosis for recovery is very good. Although Neil is expected to fully recover, the duration of his condition is long term, or at least indefinite and unknowable. Thus, his condition is substantially limiting in severity and would constitute a disability under the law.*

3. *Abdul, a high school teacher, broke his leg in a skiing accident similar to Neil's. He sustained a compound fracture and must undergo surgery to set the bone. He is hospitalized for several days and will have a cast on his leg for an additional five weeks. During these weeks, Abdul must use crutches. Abdul's physician directed him to use crutches for another week after the cast is removed, after which time he will be able to walk unaided. His prognosis for a full recovery is excellent. Abdul does not have an impairment that substantially limits his major life activities. Although his leg injury has restricted his ability to walk, it has done so for a*

relatively short time (six weeks). The injury is a transitory impairment that has no long-lasting or permanent effects.

4. *Lisa and Beatrice, both school juniors, were in a car accident in which each sustained a head injury. Lisa felt dizzy and disoriented immediately after the accident and was hospitalized overnight for observation. Lisa's doctor told her that x-rays revealed a slight concussion but no permanent injury. Lisa was released from the hospital the next day and has experienced no side effects from the injury. Lisa's head injury was not substantially limiting. The impairment lasted for only a brief time and had no permanent or long-term impact on Lisa's major life activities. Lisa does not, therefore, have a disability. In contrast, Beatrice sustained a serious concussion that resulted in long-term brain damage. Because of this, Beatrice has a short-term memory deficit, has trouble processing information, cannot concentrate, and has great difficulty learning. Unlike Lisa, Beatrice's concussion resulted in long-term, significant restrictions on her major life activities. Therefore, Beatrice has a disability.*

Persons With Records of Physical or Mental Impairments

The second prong of the definition of disability under the ADA protects people who have a history or record of an impairment that substantially limits a major life activity. It also includes persons who have been misclassified as having an impairment.

Frequently, persons who fall under the first group are persons who have histories of mental or emotional illness, drug addiction, alcoholism, heart disease, or cancer. Persons who have been erroneously diagnosed as mentally retarded or mentally ill are also examples of persons protected by the second prong of the definition.

Persons Regarded as Having a Disability

The third prong of the definition of disability under the ADA protects people who are not, in fact, substantially limited in any major life activity but are nevertheless perceived by others as having a disability, sometimes because of myth, fear, or stereotype. This covers people who are falsely thought to have an impairment that substantially limits a major life activity. It also includes people who have an impairment that may or may not *in itself* actually limit a major life activity; that is, the impairment may have a limiting effect only because others falsely believe it does or take actions that restrict the individual because of such erroneous beliefs.

28 C.F.R. § 35.104(3) *The phrase* ***has a record of impairment*** *means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.*

28 C.F.R. § 35.104(4) *The phrase* ***is regarded as having an impairment*** *means —*

(i) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Is treated by a public entity as having such an impairment.

The second and third prongs of the definition are meant to cover situations where individuals never had or do not currently have disabilities, but are treated by others as if they did. For instance, a person with severe facial scarring might be denied a job because she or he is regarded as an individual with a disability. A person with a history of heart disease might be denied a promotion because of that "record of" a disability. These persons do not, in fact, have disabilities, but have been treated by others as if they did. It is mistaken perception or a record of a disability that entitles a person to protection against discrimination under the law.

EXAMPLES:
Are these persons protected by the ADA?

1. *Demika, a college graduate with a strong record, was hospitalized during her junior year in college for a mental illness. She has fully recovered now, and is applying for a job as a teacher. Demika's history of mental illness is a record of a disability under the second prong of the definition, and the protections of the ADA are triggered if a school system denies her a job solely on the basis of her history of mental illness.*

2. *Terry is in the second grade. Her mother was recently diagnosed as HIV-positive, and the school principal mistakenly thinks Terry is also HIV-positive. In fact, Terry has tested negative for the virus. The principal takes steps to separate Terry from the other children, such as making her eat lunch alone. Although Terry has no actual disability, she is protected under the third prong of the definition, since she is regarded as having a disability.*

3. *Chris, a fourth-grade teacher, participated in a gay rights march in Washington. The principal learns of this, and assumes Chris is gay and that he must have AIDS. The principal tries to fire Chris. Chris, who does not have AIDS, is nonetheless protected under the third prong of the definition, since he is regarded as having a disability.*

4. *Brian, a third-grade student, was born with one leg shorter than the other and walks with a limp. Although the limp is a physical impairment, it does not substantially limit his ability to walk. School personnel, however, regard Brian's limp as a disability and have restricted his participation in physical education and sports out of concern he will be injured. Brian is covered by the third prong of the definition of disability.*

Use of the Second and Third Prongs

The use of the second and third prongs of the definition of individuals with disabilities arises often in the area of employment. For example, someone with a history of mental illness but no current symptoms might be denied a teaching job based solely on that record of past disability. This action would not be permissible under the ADA.

The second and third prongs also apply to discrimination against students. Elementary and secondary students may be falsely perceived to have a disability or may experience discrimination because of a record of a past disability. For instance, the second-grade student Terry, in the previous set of examples, was falsely perceived as being HIV-positive and was forced to eat her lunch alone. The general nondiscrimination provisions of the ADA apply to students who are regarded as having a disability or who have a history of a disability.

However, the second and third prongs of the definition *cannot* be used to determine whether an elementary or secondary student needs either special education and/or related services or regular education with supplementary services. (See Chapter Four, *General Nondiscrimination Requirements*, for a discussion of a school district's obligation under Title II of the ADA to provide a free appropriate public education (FAPE) to students with disabilities.) A student with a record of a past disability who does not have a current disability, or a student who is falsely believed to have a current disability, does not actually have a substantially limiting mental or physical impairment. Consequently, such a student has no need for different educational treatment because of a disability. Thus, a student who falls under the second or third prong of the definition, and who does not also fall under the first prong of the definition, is not entitled either to special education and/or related services or to regular education with supplementary services.

This misunderstanding of the purpose and intent of the second and third prongs of the definition has caused some confusion on the part of both parents and schools as to when a child is entitled to the protections of the law with respect to triggering evaluation and placement responsibilities. This confusion frequently arises with respect to students who have attention deficit disorder. The discussion below addresses this confusion.

Many school districts have recognized that some children with ADD are eligible for an evaluation and/or related aids and services under Title II and Section 504 because these children fall under the first prong of the definition of disability — that is, they actually have a mental or physical impairment that substantially limits their ability to learn. For example, Li, the third-grade student in an example cited earlier in this chapter (see page 14)

is a child with ADD who falls under the first prong of the definition. (See Chapter Four, *General Nondiscrimination Requirements*, for a discussion of evaluation and related aids and services.)

In some instances, however, school districts have inappropriately looked to the second and third prongs of the definition of disability as the basis for this eligibility. For example, some education officials and parents have the misperception that if the child "has a record of" an impairment (an evaluation of ADD by a private consultant, for example) or "is regarded" by someone (the child's doctor or the child's mother, for example) as having a disability, that automatically triggers the requirement for an evaluation and/or related aids and services.

The fact that someone believes that a child has a disability does not mean that the child is entitled to an evaluation and/or related aids and services. In such a case, the proper inquiry by the school district receiving this information is whether or not there is sufficient reason to believe that this child, because of a disability, may need special education or related aids and services, and thus would need to be evaluated. Therefore, in the case of Greg, the third-grade student whose doctor diagnosed ADD (see page 14), the school district need not automatically evaluate Greg. Rather, the school district must determine whether there is sufficient reason to believe that Greg needs special education or related aids and services. If the school district determines that Greg does not need to be evaluated, his parents may request a due process hearing with regard to that determination. (See Chapter Four, *General Nondiscrimination Requirements*.)

WHAT DOES IT MEAN TO BE QUALIFIED?

Protection under Title II is specifically afforded to *qualified* individuals with disabilities. Not every person with a disability (someone who falls within the three-prong definition) is also qualified. However, as explained below, nearly all elementary and secondary students with disabilities are "qualified individuals with disabilities" for the purpose of receiving a free appropriate public education.

The definition of a qualified individual with a disability takes two forms, depending on the nature of the Title II activity involved. These include:

- services and programs; and
- employment.

Each of these areas is discussed below.

Services and Programs

For purposes of determining whether an individual is eligible to participate in the services and programs offered by a public entity, a person is considered to be qualified if the individual meets the essential eligibility requirements needed to receive those services or participate in those programs. It does not matter whether the person meets these requirements with or without reasonable modifications to rules, policies, or practices or with or without the removal of architectural, communication, or transportation barriers. The determination is also made without regard to whether auxiliary aids and services must be provided [28 C.F.R. § 35.104].

28 C.F.R. § 35.104 ***Qualified individual with a disability*** *means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.*

When determining whether a student with a disability meets the essential eligibility requirements needed to receive the services of, and/or participate in, an elementary and secondary education program, public school districts must use the more specific definition established under Section 504. This is because, as explained in Chapter One, Title II incorporates the more specific standards of Section 504.

Section 504 uses specific and separate definitions of what "qualified" means in the context of employment, in the context of elementary and secondary education, and in the context of post-secondary education. Under Section 504, a qualified student with a disability, with regard to elementary and secondary educational services, is defined as:

- a person with a disability who is of an age during which nondisabled persons are provided education; or
- a person with a disability who is of any age during which it is mandatory under state law to provide elementary or secondary educational services to persons with disabilities or to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

Thus, under both Section 504 and Title II, a student with a disability is qualified with respect to elementary and secondary education services and programs if the student is of a certain age. There is no need to look any further or to try to determine if the student meets essential eligibility requirements in order to receive the services or participate in the programs. Age alone makes the student qualified.

Note that the Section 504 definition of "qualified" discussed above mentions the IDEA, which provides financial aid to states to assist in their efforts to ensure appropriate educational services for children with disabilities. There are some differences between the IDEA on one hand and Section 504 and Title II on

the other. For example, Title II and Section 504 use the three-pronged definition of disability spelled out earlier in this chapter. The IDEA, however, applies to students who have one of the specific physical, mental, emotional, or sensory impairments listed as the thirteen recognized disability categories under the IDEA and who have been found to need special education and related services. This difference in definition means that there may be students who qualify for regular or special education and related aids and services under Section 504/Title II but who do not have one of the thirteen disabilities recognized by the IDEA.

This Guide will not address in more detail the differences between the IDEA and Section 504/Title II. For more information on the IDEA, contact the Office of Special Education and Rehabilitative Services in the United States Department of Education. (See *Resources.*)

In summary, then, for purposes of Title II of the ADA, any student with a disability who is of the appropriate age is qualified to receive the services of, and participate in, the district's elementary and secondary education program.

EXAMPLE:
Is this child a qualified individual with a disability?

Vincent is a twelve-year-old boy with severe mental retardation. His physical impairment substantially limits his ability to learn. The law in the state in which Vincent lives requires that children between the ages of six and sixteen attend school.

Vincent is a qualified individual with a disability, since he has a disability and he is of an age during which nondisabled persons are provided education. As a qualified individual with a disability, Vincent is entitled to a free appropriate public education.

It is also important to note that persons invited to attend school events, and persons attending school events open to the public, are qualified individuals with disabilities and are covered by the ADA. This means that when schools hold parent–teacher conferences, school plays, athletic events, graduation ceremonies, or other events, parents and other associates of students involved in these activities who have disabilities are entitled to attend these events, and these events must be accessible to them. Public school systems must ensure program accessibility for these individuals with disabilities and must provide appropriate auxiliary aids and services whenever necessary to ensure effective communication. (See Chapter Six, *Program Accessibility*, and Chapter Seven, *Requirements for Effective Communication*, for a discussion of these issues.) Similarly, events open to the general public must be accessible to members of the general public who have disabilities and wish to attend the events.

EXAMPLE:
Is this parent a qualified individual with a disability?

Jacob's son Moshe is in the sixth grade, and Moshe's teacher has scheduled a parent–teacher conference with Jacob at the end of the month. Jacob, who is deaf, informs the teacher that he will need an interpreter to participate in the conference. The school district must provide an interpreter or an equally effective means of communication for the parent–teacher conference.

Employment

For the purposes of employment, an individual is considered to be qualified if the person meets the job-related requirements for a job and is able to perform its essential functions with or without reasonable accommodations [29 C.F.R. § 1630.2(m).] (For more information on the employment of qualified individuals with disabilities, see Chapter Five, *Requirements for Employment Policies and Practices.*)

EXAMPLE:
Is this employee a qualified individual with a disability?

Minh, a school principal, is blind. She has the graduate degrees and work experience required for her job. With reasonable accommodation, such as Brailled materials, she is able to perform the essential functions of her job. Minh's blindness substantially limits her sight and therefore is a disability. Minh is a qualified individual with a disability because she meets the job-related requirements for her job and is able to perform its essential functions with reasonable accommodation.

ASSOCIATIONAL DISCRIMINATION

Title II also extends its protections to people who do not have disabilities themselves but are discriminated against on the basis of their association with a person with a disability. The association can be with family members, friends, or any other person or entity [28 C.F.R. § 35.130(g); 29 C.F.R. § 1630.8].

28 C.F.R. § 35.130(g) *A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.*

EXAMPLES:
Is this discrimination on the basis of association?

1. *A school district has a policy of allowing local neighborhood theater groups to use the high school auditorium during the summer. District officials learn that one of the members of a particular theater group has AIDS. Based on this information, they refuse to let any members of the group use the school's facilities. All of the*

members of the theater group are entitled to protection under the ADA. The members of the group who do not actually have AIDS themselves are covered because of their association with the individual with AIDS.

2. *Maria, a single parent, is denied a secretarial position at a public school administrative office because the school superintendent is aware that she has a child with cerebral palsy. The superintendent is concerned that her attendance will be unreliable because of the needs of her child. Maria is protected under the ADA.*

A person who experiences associational discrimination has a right to relief under the ADA, but is not, like persons who themselves have disabilities, entitled to request reasonable accommodations in employment. In this case, Maria would not be entitled under the ADA to alter her work hours or performance to enable her to care for her child [Appendix to 29 C.F.R. Part 1630, at 406 (1994)].

RETALIATION OR COERCION

28 C.F.R. § 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

A school district may not retaliate against or coerce any individual because that individual took action to oppose any act or practice prohibited by Title II, or because that individual assisted or encouraged others in exercising their rights under Title II. Prohibited actions include threats, intimidation, harassment, or interference. With respect to investigations, proceedings, or hearings under the ADA, the protection against retaliation applies to individuals who file complaints as well as to those who testify or otherwise assist in connection with the investigation, proceeding, or hearing [28 C.F.R. § 35.134; 29 C.F.R. § 1630.12].

EXAMPLE:
Is this teacher's action retaliation?

A student with asthma testified at a grievance hearing that the coach of the track team pressured her to drop off the team because of her disability. Two of the student's teammates who do not have a disability testified at the grievance hearing on behalf of the student with asthma. The track coach was also the algebra teacher for these three students. After the grievance hearing, in his capacity as algebra teacher, the coach/teacher informed the three students that extra problems they had submitted for extra credit were not submitted in time. However, other students in the same class submitted, and received extra credit for, extra problems that were submitted even later. The evidence suggests that the teacher has retaliated against the students in violation of Title II.

Regardless of the outcome of a grievance hearing, Title II protects from retaliation both the individual with a disability who filed a grievance to protect his or her rights and any witnesses who participated in the grievance hearing on his or her behalf. The school district is responsible under Title II for ensuring that such individuals are not retaliated against, and, in the example above, for remedying fully the retaliatory actions that were taken against the three individuals.

EXCLUSIONS FROM ADA PROTECTION

A Direct Threat to Health or Safety

One factor to be considered in determining whether a person is a qualified individual with a disability is the health or safety of others. Under the ADA, if an individual with a disability poses a *direct threat* to the health or safety of others, then that person is not a qualified individual with a disability. Such a person has not met an essential eligibility requirement for the receipt of services or participation in programs or activities of a public entity.

The concept of direct threat to health or safety is more complicated in the context of elementary and secondary education, since all students with disabilities are qualified to receive educational services if they are of a certain age. If a student's threatening actions are a behavioral manifestation of a disability, that student is still qualified to receive educational services, and the school district may not simply refuse to educate the student. However, the school district may decide that the student who poses a direct threat to the health or safety of others needs a more restrictive placement. The school district's decision is subject to the evaluation and placement requirements outlined in Chapter Four, *General Nondiscrimination Requirements.*

In the employment context, the employer may raise concerns about direct threats to the health or safety of the individual with a disability, as well as to the health or safety of others, as a defense to a charge of discrimination [29 C.F.R. § 1630.15(b)(2)]. (See the discussion in Chapter Five, *Requirements for Employment Practices and Policies,* for more information.)

The determination that an individual with a disability poses a direct threat to the health or safety of the individual or of others may not be based on stereotypes. The decision must be based on an individualized assessment of the person's present condition, not on speculation about any future risk. It must also be based on reasonable judgment founded on medical evidence or on the best available objective evidence. Factors to be considered in determining whether a particular individual poses a direct threat to health and safety include:

- the duration, nature, and severity of the potential harm;
- the likelihood the potential injury will occur;
- the imminence of the potential harm; and
- whether a reasonable accommodation (in an employment context), or reasonable modification in policies, practices, or procedures, or the provision of auxiliary aids and services, will mitigate or eliminate the risk.

EXAMPLES:
Do these individuals pose a "direct threat to health and safety"?

1. *Satchan, who has limited hearing and uses a hearing aid, has applied to be a bus driver. Without reviewing any of Satchan's medical records, the school district decides not to hire Satchan because of his hearing disability, reasoning that Satchan's hearing impairment would interfere with his ability to safely drive the bus and thus would pose a direct threat to his own safety and the safety of the school children on the bus. In fact, the medical records show that Satchan's hearing, with the hearing aid, is quite good and would* not *interfere with his ability to drive the bus safely. Furthermore, in a previous job as a bus driver for another school district, Satchan always carried a spare hearing aid. Thus, the likelihood that he would be forced to drive without a hearing aid as a result of technical failure of an aid is remote. Satchan would not pose a direct threat to the health or safety of himself or others by driving the bus. The school district's actions violate the ADA.*

2. *Abby is in the seventh grade. She has been diagnosed as having a multiple personality disorder. One of her personalities has violent tendencies. While in this particular personality, Abby threatened her teacher and classmates with a sharp knife being used for a crafts project. Abby's actions pose a direct threat to the safety of others, since the incident that has already occurred suggests serious harm could well occur. It is not practical to remove such harmful objects as scissors from her reach at all times. Nevertheless, Abby is still qualified to receive educational services, since the threatening actions were a behavioral manifestation of Abby's disability. The school district must still provide Abby with FAPE. However, the school district need not keep Abby in the same classroom if a more restrictive placement is appropriate and satisfies the evaluation and placement requirements outlined in* Chapter Four, *General Nondiscrimination Requirements.*

Conditions Not Considered Disabilities

Title II explicitly excludes the following conditions from the term disability: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs. Moreover, the phrase "physical or mental impairment" does not include homosexuality or bisexuality; those orientations are not considered disabilities under the ADA [28 C.F.R. § 35.104].

Individuals with the above-referenced conditions or orientations are not entitled to protection under the ADA based solely on these conditions. However, where these individuals also have physical or mental conditions that do constitute disabilities under the ADA, they may not be discriminated against on the basis of the covered disability. Furthermore, they would be protected under the ADA if they were discriminated against on the basis of their association with a person with a disability.

Examples:
Are these individuals included under the ADA's definition of disability?

1. *Sandra is a sixth-grade student who recently enrolled in a new school. Since she has been in the school, Sandra has been caught stealing many articles of clothing from her classmates and equipment in her classroom. She is diagnosed as having kleptomania. Kleptomania is not a disability under the ADA.*

2. *Ken, a high school sophomore, has made a series of obscene, threatening phone calls to female students at the school. School officials discover this and suspend Ken for three weeks. Ken claims that his behavior is attributable to a sexual behavior disorder. Ken is not entitled to protection under the ADA because the school district's actions were not taken on the basis of a covered disability.*

Illegal Use of Drugs Not Protected

Although an individual addicted to drugs may be an individual with a disability, persons who are *currently* engaging in the illegal use of drugs are not protected by the ADA. Thus, a school district may withhold services or benefits from a person because of his or her current illegal use of drugs. By contrast, a person with a history of drug use who has been successfully rehabilitated, or someone who is participating in a drug rehabilitation program and is *not* currently using drugs illegally, is protected.

28 C.F.R. § 35.131 Illegal use of drugs.

*(a) **General.** (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.*

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who —

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

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Title II distinguishes between the illegal and legal use of drugs. The term "illegal use of drugs" refers to drugs whose possession or distribution is unlawful under the Controlled Substances Act. It does not include the use of a drug taken under supervision of a physician or other licensed health care professional, and other uses allowed by law are protected. However, unlawful use of prescription controlled substances is considered illegal use of drugs [28 C.F.R. § 35.104; 28 C.F.R. § 35.131].

EXAMPLES:
Are these individuals excluded from ADA protection because of current illegal drug use?

1. *Jerry is a sophomore in high school. The school crossing guard sees Jerry snorting cocaine in the school's parking lot and reports Jerry to the principal. Jerry is automatically suspended from school, consistent with the school's discipline policy. Jerry's current use of cocaine means he is not a qualified individual with a disability under Title II, even if he is addicted to cocaine.*

2. *J.J. is a high school chemistry teacher. The principal walks into chemistry lab late in the afternoon and discovers J.J. smoking crack cocaine. Although individuals using crack cocaine may well have a drug addiction, J.J.'s current use of the drug means he is not considered an individual with a disability under Title II.*

It is also important to note that the ADA amended the Rehabilitation Act of 1973, including Section 504, to incorporate the ADA provisions regarding "current use of illegal drugs." The ADA also amended the Rehabilitation Act to allow school districts to take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student with a disability who is currently engaging in the illegal use of drugs or in the use of alcohol, to the same extent that such disciplinary action is taken against nondisabled students. Furthermore, the due process procedures described in Section 504 do not apply to such disciplinary actions. (See Chapter Four, *General Nondiscrimination Provisions.*)

EXAMPLE:
Does this disciplinary action violate the ADA?

Olga, Christine, and Lina are all juniors in high school. Olga has a drug addiction, Christine has a learning disability, and Lina has no disabilities. A hall monitor finds Olga, Christine, and Lina in the bathroom, smoking marijuana. The principal suspends all three students. The principal's actions do not violate either the ADA or Section 504.

Note, however, that if Christine is eligible for services under the Individuals with Disabilities Education Act (IDEA) because of her learning disability (see pages 21–22), she could

be suspended only if doing so would be permissible under the requirements for student discipline that are applicable to IDEA-eligible students. In addition, under the IDEA, educational services must continue during the period of disciplinary removal for IDEA-eligible students.

Use of Alcohol

Alcoholism can be a disability covered by the ADA. If a person's alcoholism substantially limits a major life activity, that person has a disability under the ADA. Title II does not specifically address the issue of alcoholism in students. As noted above, though, the ADA statute did amend Section 504 of the Rehabilitation Act to allow local education agencies to discipline students with disabilities for the use of alcohol to the same extent that students without disabilities who use alcohol are disciplined. Employers may prohibit the use of alcohol by all employees at the workplace and may hold an alcoholic employee to the same performance and conduct standards that apply to all employees [29 C.F.R. § 1630.16(b)].

EXAMPLES:
Can these alcoholics be disciplined under the ADA?

1. *Howard, a high school teacher, is an alcoholic. Howard's job performance has been dismal for the last two months. He has repeatedly arrived late to work, has failed to grade students' papers, has lost two sets of student papers, and has been incoherent in several classes. The school starts disciplinary proceedings against Howard. Even though Howard's poor job performance is directly related to his alcoholism, the school may discipline Howard to the extent it would discipline any employee for a similar job performance.*

2. *Rachel, a high school senior, has been diagnosed as an alcoholic by both a physician and a counselor. However, Rachel and her parents have refused to admit that a problem exists. Her alcoholism has resulted in serious problems at school and she has been warned that if she arrives drunk again she will be suspended. Today Rachel arrived late for school, slept through her morning classes, and was unable to respond coherently to questions. Her breath smells strongly of alcohol. The school is justified in suspending Rachel for using alcohol; she may be disciplined to the same extent that students who are not considered alcoholics are disciplined in similar circumstances.*

U.S. Citizenship *Not* Required for Protection

A person does *not* have to be a United States citizen to be covered by Title II of the ADA. There are no citizenship requirements in Title II.

CHAPTER THREE

PLANNING FOR COMPLIANCE

This chapter will present a practical approach to organizing and implementing your school system's effort to come into compliance with Title II. This "five–four–three" approach highlights five action steps, four principles, and three phases that must be considered as you develop a manageable process that is well adapted to your needs.

The chapter presents ***five action steps***: designating a responsible employee, providing notice of ADA requirements, establishing a grievance procedure, conducting a self-evaluation, and developing a transition plan. The chapter also reviews timelines for carrying out these steps and achieving compliance.

Experience in achieving compliance with Section 504 of the Rehabilitation Act has shown that ***four principles*** are keys to success that must be considered as each step is taken. These include:

- commitment from the highest level of leadership;
- coordination of compliance activities;
- involvement of people with disabilities; and
- institutionalization of compliance procedures.

The self-evaluation — or the updated self-evaluation — should be implemented in ***three phases***. During the first phase, preliminary planning occurs to define the compliance process, identify participants, and set up the procedures for communication and coordination that will ensure its success. In the second phase, a comprehensive evaluation of current services, policies, and practices is undertaken under the oversight of the ADA coordinator. In the third phase, information is assessed and essential modifications identified in the second phase are carried out.

Following the initial discussion of this "five–four–three" approach, the chapter focuses on recommended procedures for conducting Phase One, including planning steps needed to prepare to conduct the self-evaluation and meet other administrative requirements of Title II. The chapter concludes with worksheets designed to assist you in this initial planning phase.

FIVE ACTION STEPS

Title II of the ADA requires that state and local government entities — including school systems — take systematic steps to

examine their programs and establish a plan for ensuring compliance with the law. Five action steps must be taken to bring a public entity into compliance with the regulation:

STEP ONE:	Designate a responsible employee
STEP TWO:	Provide notice of ADA requirements
STEP THREE:	Establish a grievance procedure
STEP FOUR:	Conduct a self-evaluation
STEP FIVE:	Develop a transition plan

Each of these steps will now be discussed in more detail.

STEP ONE: Designate a Responsible Employee

28 C.F.R. § 35.107(a) Designation of responsible employee. *A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.*

Under Title II, any public entity with fifty or more employees must designate at least one employee to coordinate ADA compliance [28 C.F.R. § 35.107(a)]. The regulation refers to this person as the "responsible employee" or employees; this guide uses the term "ADA coordinator." It is strongly recommended that school systems, regardless of size, designate a *single* person with overall responsibility for coordinating all compliance activities. It is important to note that school districts that are subject to Section 504 and employ fifteen or more persons must designate at least one person to coordinate their Section 504 compliance activities [34 C.F.R. § 104.7(a)]. The same individual can coordinate ADA and Section 504 compliance activities.

The ADA coordinator is the key player in ensuring ADA compliance. The coordinator's role includes planning and coordinating overall compliance efforts, ensuring that the five action steps are completed, and receiving and investigating complaints related to discrimination on the basis of disability. To fulfill his or her job, the coordinator must have the authority, knowledge, skills and motivation to implement the regulations effectively.

One purpose of this requirement is to ensure that members of the public who need to deal with school systems can readily identify a person who is familiar with ADA and Section 504 requirements and who can communicate those requirements to other key staff. It is expected that this employee will have the authority to take whatever action is needed to correct infractions. It is also required, however, that the school system make every effort to prevent violations by ensuring that all of its employees and agents are thoroughly familiar with their obligations.

In order to ensure that individuals can easily identify the ADA coordinator, the public entity must provide the ADA coordinator's name, office address, and telephone number to all interested individuals [28 C.F.R. § 35.107(a)]. Notice of the identity of the ADA coordinator is generally combined for ease and efficiency with notice of ADA requirements — our next step.

STEP TWO: Provide Notice of ADA Requirements

All public entities, regardless of size, must provide information to applicants, participants, beneficiaries, employees, and other interested persons regarding the rights and protections afforded by Title II, including information about how the Title II requirements apply to its particular programs, services, and activities [28 C.F.R. § 35.106].

28 C.F.R. § 35.106
Notice. *A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.*

The notice requirements of Title II and Section 504 are somewhat different. Under the Section 504 regulation, a recipient of federal financial assistance that employs 15 or more people must provide a notice that states, where appropriate, that the recipient does not discriminate on the basis of disability in admission or access to, or treatment or employment in, its programs and activities [34 C.F.R. § 104.8(a)]. Under Section 504, the notice must also include identification of the employee designated to coordinate Section 504 compliance efforts. A recipient of federal financial assistance that provides notice about coverage under the ADA must still meet the more specific notice requirement of Section 504, including identification of the Section 504 coordinator, if the recipient has 15 or more employees.

A sample notice consistent with the requirements of Title II and Section 504 that can be adapted by your school system is provided on the following page. Note that in order to facilitate effective communication, the information is presented in clear, straightforward language, avoiding legal and bureaucratic idioms, and in alternative formats that are accessible to individuals with different disabilities. In the sample notice on the next page, the same person coordinates Title II and Section 504 requirements. The sample notice also identifies the ADA and Section 504 coordinator by name and gives this person's office address and telephone number.

The school system must provide this information not just once, but on an ongoing basis [28 C.F.R. § 35.106 and 34 C.F.R. § 104.8(a)]. Appropriate methods of providing notice include publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in public places; or the broadcast of information by television or radio.

Different approaches are particularly suited to different segments of the public. On the following page are some of the ways in which this information can be provided on a regular basis to specific target audiences.

Many organizations use graphic symbols such as those shown on page 35 in notices and advertisements to call attention to the nature of the message.

SAMPLE NOTICE

[NAME OF SCHOOL SYSTEM] does not discriminate on the basis of disability in admission to its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations. The [school system] also does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Questions, complaints, or requests for additional information regarding the ADA and Section 504 may be forwarded to the designated ADA and Section 504 compliance coordinator.

Name and Title:
Office Address:
Phone Number (Voice/TDD):
Days/Hours Available:

This notice is available from the ADA and Section 504 compliance coordinator in large print, on audio tape, and in Braille. [If additional alternative formats are available, such as computer bulletin boards, school districts may state that this notice is available in the additional alternative formats.]

SOME METHODS OF PROVIDING NOTICE

IN ORDER TO REACH:	PROVIDE INFORMATION THROUGH:
The public at large	➤ newspaper legal notice ➤ flyers posted at all facilities ➤ radio and/or captioned television announcements
Students	➤ report card enclosures ➤ regular mailings ➤ postings at all program sites and frequented areas ➤ announcements in school newspaper
Prospective Employees	➤ insert in job application ➤ newspaper ads ➤ posted advertisements ➤ posted vacancy notices
Current Employees	➤ regular mailings to employees ➤ postings at work sites ➤ postings in lounges, faculty rooms, and dining areas ➤ personnel manual

It is ultimately the responsibility of the head of the school system to determine the most effective methods for making individuals aware of their rights and protections, although this responsibility may be delegated to the ADA coordinator.

Notices should be accessible to people with various disabilities. For example, information should be available to persons with mobility impairments; therefore, it may not be posted only in a portion of the building accessible exclusively by stairs. The school system must also be prepared to provide notices in *alternative formats* upon request.

Examples of alternative formats include:

- radio reading services;
- large print (18-point or more);
- audiocassettes;
- bulletin boards;
- Braille; and
- captioning.

It is possible to give notice through many of the channels suggested on the previous page using alternative formats. For example, some newspapers feature a large print or Braille edition. They may also offer a dial-in reading service. Flyers can also be posted in large print versions.

STEP THREE: Establish a Grievance Procedure

28 C.F.R. § 35.107(b) Complaint procedure. *A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.*

It is a common misunderstanding among many public school systems that the required grievance procedure applies only to employees. Not so! The purpose of this grievance procedure is to provide a means for timely resolution of *all* problems or conflicts related to ADA compliance before they escalate to the point where the complainant feels it necessary to resort to the federal complaint process or litigation. This procedure must be just as accessible and appropriate for use by students or public citizens as by school system employees.

The Title II regulation provides that the ADA coordinator is to oversee the investigation and resolution of complaints [28 C.F.R. § 35.107(a)]. The Title II regulation also provides that public entities must adopt and publish grievance procedures providing

for prompt and equitable resolution of complaints [28 C.F.R. § 35.107(b)]. The public entity may use a grievance procedure that is already in place; it is not necessary to design a separate process specifically for the ADA. The Title II requirements regarding grievance procedures have been in effect since January 26, 1992.

There are similarities and differences between the Title II and Section 504 requirements concerning grievance procedures. Both regulations require that covered entities adopt and publish a grievance procedure providing for the prompt and equitable resolution of complaints [28 C.F.R. § 35.107(b) and 34 C.F.R. § 104.7(b)]. Under both regulations, complainants are not required to exhaust grievance procedures before filing a complaint with the U.S. Department of Education's Office for Civil Rights. However, the Section 504 requirements apply to recipients with fifteen or more employees, while the Title II requirements apply to public entities with 50 or more employees [28 C.F.R. § 35.107(a) and 34 C.F.R. § 104.7(a)]. Also, unlike the Title II regulation, the Section 504 regulation specifically states that grievance procedures must adopt due process standards [34 C.F.R. § 104.7(b)]. In addition, unlike Title II, Section 504 does not require that grievance procedures be established for applicants for employment or for admission to post-secondary educational institutions [34 C.F.R. § 104.7(b)]. Thus, grievance procedures under Title II must provide a forum for these complainants.

This Guide recommends that a grievance procedure include the following components:

- a detailed description of the procedures for submitting a grievance;
- a two-step review process that allows for appeal;
- reasonable time frames for review and resolution of the grievance;
- records of all complaints submitted, responses given, and steps taken to resolve the issue; and
- an alternative procedure if the complainant alleges that the ADA coordinator or other school officials with responsibilities regarding the grievance procedures process are a part of the alleged discrimination.

Your school system should feel free to adapt the grievance procedures requirements of Title II and Section 504 to your specific working procedures and authority structure.

As mentioned earlier, the U.S. Department of Education's Office for Civil Rights is responsible for investigating complaints alleging discrimination on the basis of disability under Title II and Section 504 by public elementary and secondary school systems. A delay in filing a complaint that is the result of first pursuing the school system's grievance procedure is generally

considered good cause for extending the time available to submit the complaint.

STEP FOUR: Conduct a Self-Evaluation

All public entities, regardless of size, must conduct a self-evaluation [28 C.F.R. § 35.105(a)]. The self-evaluation is a comprehensive review of the public entity's current policies and practices, including communications and employment. Through the self-evaluation, the public entity must:

1. identify any policies or practices that do not comply with the Title II requirements; and
2. modify policies and practices to bring them into compliance.

28 C.F.R. § 35.105 Self-evaluation. *(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, polices, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices, is required, the public entity shall proceed to make the necessary modifications.*

The scope of the review includes not only formal written policies and procedures (such as those contained in employee handbooks and memoranda) but also actual operating practices [28 C.F.R. § 35.105(a)]. In order to review what is actually done, as well as what is on paper as policy, it is important to involve not only administrators and senior managers but also program staff and participants. The school system must analyze the impact on persons with disabilities, recognizing that adverse effects are often inadvertent.

The Title II self-evaluation should have been completed by January 26, 1993 [28 C.F.R. § 35.105(a)]. School systems have been responsible for compliance with Title II since January 26, 1992. Therefore, if discriminatory policies or practices are identified during the review process, they should be modified immediately.

The regulations require that school systems provide an opportunity for interested persons to participate in the self-evaluation by submitting comments [28 C.F.R. § 35.105(b)]. Experience with Section 504 has shown the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, one that promotes effective and efficient implementation of nondiscriminatory policies and procedures. The U.S. Department of Education expects that it will likewise be useful to public entities newly covered by the ADA.

28 C.F.R. § 35.105 Self-evaluation. *(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.*

Public entities that employ 50 or more persons must maintain the self-evaluation on file and make it available for public inspection for at least three years from the date the self-evaluation was completed [28 C.F.R. § 35.105(c)]. It is the responsibility of the ADA coordinator to maintain required information in a form that will facilitate a prompt response to requests. Records kept must identify individuals who participated directly or indirectly in the review, the areas examined, whatever problems were discovered, and the corrections made as a result of the self-evaluation process [28 C.F.R. § 35.105(c)].

28 C.F.R. § 35.105 Self-evaluation. *(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:*

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

28 C.F.R. § 35.105 Self-evaluation. *(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.*

If your school system receives federal funding and you have previously conducted a self-evaluation as required by Section 504, you are required to review only:

1. programs established since the Section 504 self-evaluation was conducted; and

2. new or modified policies or practices that were not included in an earlier self-evaluation [28 C.F.R. § 35.105(c)].

However, because most self-evaluations were done some years ago, many school systems should reexamine *all* of their policies and programs. Programs and functions may have changed, and actions that were supposed to have been taken to comply with Section 504 may not have been fully implemented or may no longer be effective. (A glaring example of such an area of change is the entire realm of computers, now a significant part of nearly every aspect of services and programs.) Furthermore, many Section 504 self-evaluations focused on access to facilities, with limited attention to the ADA's requirement to provide equally effective communications for persons with disabilities.

Public entities that were required to have completed Section 504 self-evaluations and have not done so may meet this obligation as they carry out the ADA self-evaluation. However, the deadlines for programmatic and structural modifications required under the ADA cannot be substituted for the Section 504 deadlines. Federally funded state and local entities must meet *both* the Section 504 and the ADA compliance deadlines. If your school system has not completed its Section 504 self-evaluation or made the necessary modifications to policies and procedures, this Guide recommends that you prioritize and implement modifications in order to ensure Section 504 compliance as quickly as possible.

A specific approach to carrying out a self-evaluation in each of the four areas required by Title II — general nondiscrimination requirements, employment, program access, and communications — is presented as the final part of each of the four corresponding chapters of this Guide. In addition, worksheets are included for use in conducting the self-evaluation. They may be used as is or adapted to better meet the specific needs of your school system.

It is also important to note that while the self-evaluation is not required to address the need for ADA-related training, it would be appropriate for school districts to evaluate training efforts because, in many cases, lack of training can lead to discriminatory practices, even when the policies in place are nondiscriminatory.

STEP FIVE: Develop a Transition Plan

Under Title II, public school districts that employ 50 or more persons are required to develop a transition plan when structural changes to existing facilities are necessary in order to make a program, service, or activity accessible to people with disabilities [28 C.F.R. § 35.150(d)(1)]. The regulations require that, at a minimum, the transition plan:

- identify physical obstacles in facilities that limit the accessibility of the public entity's programs, services, or activities to people with disabilities, including inadequate structural communication features (see Chapter Seven, *Requirements for Effective Communication*);
- describe in detail the methods the entity will use to make the facilities accessible;
- provide a schedule for making the access modifications;
- provide a yearly schedule for making the modifications if the transition plan is more than one year long; and
- indicate the name of the official who is responsible for implementing the transition plan [28 C.F.R. § 35.150(d)(3)].

28 C.F.R. § 35.150 *(d)*
Transition plan. (1) *In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.*

The Title II transition plan is required for programs and policies that were not previously included in a Section 504 transition plan [28 C.F.R. § 35.150(d)(4)]. However, public school systems that are covered under Section 504 are not shielded from obligations under that statute, such as deadlines for making structural modifications, merely because they have met the Title II transition plan requirements.

The Title II transition plan was to have been developed by July 26, 1992 [28 C.F.R. § 35.150(d)(1)]. Nonstructural changes should be implemented immediately. Any structural changes outlined in the transition plan must be completed as expeditiously as possible, but no later than January 26, 1995 [28 C.F.R. § 35.150(c)]. A review of existing facilities should be performed early in the self–evaluation process. Completing the transition plan will clarify priorities and facilitate completion of structural changes. A more detailed discussion of the Title II and Section 504 requirements regarding transition plans is presented in Chapter Six, *Program Accessibility.*

Timelines for Compliance

The two tables that follow summarize the entities which are required to comply with each of the five action steps that have just been discussed and the effective dates by which critical milestones identified in the action steps must be achieved.

WHO MUST COMPLY?

ACTION STEPS	ENTITIES REQUIRED TO COMPLY	
	Title II	*Section 504*
1. Designate responsible employee	50 or more employees	15 or more employees
2. Provide notice	All entities	15 or more employees
3. Establish grievance procedure	50 or more employees	15 or more employees
4. Conduct self-evaluation	All entities	All entities
5. Develop transition plan	50 or more employees	All entities

DEADLINES FOR COMPLIANCE

REQUIREMENTS	DEADLINES	
	Title II	*Section 504*
1. Designate responsible employee	January 26, 1992	June 3, 1977
2. Provide notice	January 26, 1992	September 3, 1977
3. Establish grievance procedure	January 26, 1992	June 3, 1977
4. Conduct self-evaluation	January 26, 1993	June 3, 1978
5. Develop transition plan	July 26, 1992	December 3, 1977
6. Complete structural changes	January 26, 1995 (but as expeditiously as possible)	June 3, 1980

FOUR PRINCIPLES OF EFFECTIVE COMPLIANCE

School system personnel experienced with Section 504 cite four general principles as keys to an effective compliance process that are highly relevant to Title II:

1. Gain commitment from leaders;
2. Coordinate compliance activities;
3. Involve people with disabilities; and
4. Institutionalize compliance procedures.

Each of these principles will help you open doors for persons with disabilities to participate fully in your school system. Not only will they help you comply with the specific requirements of the ADA, but they will also foster dynamic, ongoing change that will help identify and end other discriminatory practices as well. The following paragraphs give a general idea of what is meant by each principle; however, each school system will need to adapt the principles thoughtfully to its own situation.

PRINCIPLE ONE: Gain Commitment from School System Leaders

To establish a solid foundation for compliance, seek an explicit commitment by the senior political and executive leadership of your school system to the ADA's goals and to full compliance with the ADA requirements. It is critical that this commitment be communicated clearly and convincingly to all staff and students. When high-level officials in the school system and others in responsible positions assume strong leadership roles, program managers and staff are far more motivated to address nondiscrimination. The senior leadership should remain involved throughout the compliance process, reviewing progress and participating in decision-making at critical points (such as the approval of budgets for barrier removal).

PRINCIPLE TWO: Coordinate Compliance Activities

ADA compliance is a complex process that affects the school system at many levels. Experience indicates that compliance activities are best approached as a coordinated whole; few problems can be effectively remedied through a fragmented effort. Coordination can facilitate the sharing of information and resources and strengthen accountability. The designation of the ADA coordinator is a critical first step in promoting coordination. As mentioned earlier in the chapter, the ADA coordinator is the key player in planning and coordinating ADA compliance efforts.

In addition, your school system will want to form a compliance team to work with the coordinator. The structure of support for coordination will depend on the size of your school system and the way it is organized. For relatively small systems, your compliance team may be a working group in which major divisions and functions are represented, and which includes personnel who have the skills and experience necessary to carry out planning and implementation tasks. Larger school systems may have an executive committee, a compliance team that meets regularly to oversee the compliance process as a whole, and subcommittees for the different functional areas of the ADA (e.g., employment, program accessibility, communication, and policies and practices).

PRINCIPLE THREE: Involve People with Disabilities

The Title II regulation requires that you involve people with disabilities and other interested persons in the self-evaluation process and in the development of the transition plan. The experience of many communities confirms that cooperation between the disability community and educational institutions can lead to creative problem solving, improved communications, and mutual understanding. For example, if your school system has student organizations that represent students with disabilities, these organizations can be invited to send representatives. Many associations that serve persons with disabilities would also be responsive to calls requesting nominations for committee membership.

PRINCIPLE FOUR: Institutionalize Compliance Procedures

The self-evaluation and the transition plan target needed modifications in employment practices, operating procedures, communications, and access to programs and facilities. Ensuring that these modifications are made and that equal opportunity for persons with disabilities is institutionalized is a difficult task. One of the lessons learned from experience with Section 504 was that many educational institutions failed to adequately follow through on their planning, while others instituted changes unevenly or allowed them to erode over time.

Success in implementing permanent changes depends to a great extent on the quality of the planning process itself and on the degree to which compliance becomes integrated in ongoing operations. For example, it is important that training be offered to familiarize new employees with nondiscrimination policies and practices. Also, accessible features, once installed, must be regularly maintained [28 C.F.R. § 35.133(a)]. Similarly, as the employee handbook is updated, procedures must be in place to ensure that updates are consistent with nondiscrimination requirements. The ADA coordinator should be the key player

responsible for ensuring that compliance becomes integrated in the school district's ongoing operations. This Guide recommends that compliance teams composed of individuals representing major divisions and functions work with the coordinator to ensure ongoing compliance.

THE THREE-PHASE PROCESS

This approach organizes the self-evaluation process into three main phases, which incorporate the five action steps and four principles discussed earlier. The flowchart on page 46 illustrates the three phases of the self-evaluation process:

Phase I: Preliminary planning
Phase II: Evaluating current services, policies, and practices
Phase III: Selecting and implementing modifications

The three phases are not chronologically distinct. Phases II and III, in particular, overlap extensively. Discriminatory policies, practices, and procedures identified in the self-evaluation should be modified immediately, even before the self-evaluation is completed. When barriers to programs and facilities are identified, nonstructural changes to ensure program accessibility should be made as expeditiously as possible.

Following a brief summary of each phase, Phase I will be discussed in more detail. Each of the remaining chapters of this Guide (except Chapter 8, *Compliance Procedures*) will conclude with a discussion of how to conduct Phases II and III so that the requirements presented in those chapters are fully addressed in the self-evaluation process.

PHASE ONE: Preliminary Planning

During Phase I, the designated ADA coordinator is appointed and placed in position with a firm statement of commitment and mission from the senior leadership of the school system (Action Step One). This person becomes thoroughly familiar with the requirements of the regulations through review of materials, training, conversations with peers, and other means, as appropriate.

The coordinator facilitates the definition of the compliance process through which the school system will complete its self-evaluation and transition plan. This will include, for example, determining what group size and membership is appropriate for each task given the school system's size and structure. A compliance team (or several teams) is recruited and oriented to its tasks. Individuals with disabilities and others from the community are identified and recruited to participate in the self-evaluation

process. These might include parents, students, and concerned members of the local community, especially those with disabilities.

The process of planning and implementation is defined by the compliance team or executive committee. Notice is given of the ADA coordinator and the school system's commitment to compliance (Action Step Two). An internal procedure for attempting to address and resolve grievances stemming from alleged ADA violations is established (Action Step Three).

Throughout the planning phase, internal coordination occurs to ensure that leaders are aware of and support the steps taken.

PHASE TWO: Evaluating Current Services, Policies, and Practices

During Phase II, Action Steps Four (conducting a self-evaluation) and Five (developing a transition plan) are initiated. Subcommittees, as assigned, thoroughly investigate how the school system currently operates in each of the areas covered by the regulations and document the situation as it exists. Areas to be examined include nondiscrimination policies and procedures in programs and activities; employment; accessibility to facilities where programs, services, and activities occur; and effective communication.

Worksheets are included in the Guide to facilitate this process. As problems are identified, immediate steps are taken wherever possible to remedy them and achieve compliance. As reports are presented, more complex problems (such as those that may require structural changes or relocation of major programs) are analyzed. Options are clearly defined and possible modifications are identified for consideration.

PHASE THREE: Selecting and Implementing Modifications

During Phase III, Action Steps Four and Five are concluded and procedures for ongoing monitoring to maintain compliance are adopted. Major accomplishments expected during Phase III include the following:

- Changes to discriminatory policies, practices, and procedures are fully documented and institutionalized.
- Employment practices are further modified as needed; managers, interviewers, and others involved in the school system's employment process are fully informed of any changes in procedure that must be made to comply with the ADA.

- A draft version of a transition plan to complete structural changes is prepared and circulated for comment.
- Revisions to the transition plan are integrated into a final plan and necessary steps are taken to meet timelines for structural changes.
- Structural changes to achieve program access are made.
- Procedures are put in place to ensure that access to facilities that house programs, activities, and services is maintained (perhaps through regular inspections).
- Other nonstructural changes to achieve program access are instituted.
- The school district takes further actions as required (beyond those already taken in Phase II) to permanently upgrade its capacity for ensuring effective communication with persons who have disabilities.

During this phase, staff training and other internal communication must occur to ensure that everyone understands what changes were made and why. Clear and appropriate training and communication will maximize the support and understanding of the school district as a whole and help ensure that violations do not occur because of lack of knowledge. This training and communication must occur on an ongoing basis, since employees change continually. New employees must be routinely familiarized with their part in ensuring continued compliance.

PHASE ONE: PRELIMINARY PLANNING

Appoint ADA coordinator.

Gain statement of commitment from school system leadership.

Plan compliance process.

Appoint team members.

Orient/train team members.

Refine compliance process.

List all programs, services, and activities.

Collect summary data for listed programs, services, and activities.

Draft and publish notice.

Draft and publish grievance procedures.

PHASE TWO: SELF-EVALUATION

Audit programs, services, and activities to ensure nondiscriminatory policies and procedures.

Evaluate employment policies and practices.

Evaluate facilities to ensure access to all programs, services, and activities.

Evaluate communications to ensure they are equally effective for persons with disabilities.

PHASE THREE: MODIFICATIONS

Modify discriminatory policies and practices.

Plan for ongoing staff orientation.

Make nonstructural modifications.

Develop transition plan for structural modifications.

Make structural modifications.

Develop communications capacity.

IMPLEMENTATION

Orientation and Project Start-up

The ADA coordinator initiates planning through a series of tasks designed to gain personal familiarity with legal requirements, structure and initiate the compliance process, develop an overview of the school system's programs, and complete initial action steps. These key tasks consist of substeps that may be outlined as follows.

Complete Personal Orientation to the ADA

- Review the ADA statute, regulations, and technical assistance materials.
- Attend an ADA training program.
- Review the school system's Section 504 plans and documents.
- Discuss compliance with key staff and community leaders.

Structure and Initiate the Compliance Process

- Evaluate personnel and resources needed for the compliance process.
- Convene or recruit, orient, and train compliance team.
- Draft a compliance process work plan.

Develop Overview of School System's Programs

- List key programs, services, and activities within the school system.
- Collect concise descriptions for key programs, services, and activities.
- Collect and document policies and practices governing administrative procedures for these key programs, services, and activities.

Worksheet 3–1 will help you monitor your completion of these initial tasks, which are discussed more fully in the pages that follow.

Complete Personal Orientation. The ADA coordinator's personal orientation process is extremely important. If you are the ADA coordinator, you will need to understand ADA requirements thoroughly. As coordinator, you should be able to answer questions from others employed by the school system as well as

IMPLEMENTATION

Conducting the Planning Process

This section provides suggestions for conducting the following Phase One activities:

- **Orientation and project start-up**
- **Structure and initiate the compliance process**
- **Develop an overview of school system programs**

from those who are served by the schools. As you begin to accumulate information, it is important to develop organized and effective filing systems that will help you readily access the information you and others will need. You should also keep careful track of those who have helped you in these initial stages; you will want to maintain a network of well-informed and reliable resources you can contact when specific issues arise. (See *Resources* for assistance in developing your network.)

Structure and Initiate the Compliance Process

There is no one correct approach to compliance. Each school system must develop an approach that meets its own needs and those of the community it serves. The following guidance and worksheets, however, may be helpful to you as you plan your approach.

A team approach is key to achieving successful compliance for several reasons. First, to complete the self-evaluation and transition plan, information must be collected from *all* of the school system's programs, services, and activities. Clearly, this is too large a task for one person. Second, the transition plan and self-evaluation require varied expertise and specialized skills. A team approach enables individuals with all of the necessary skills to be involved in the compliance process.

One of the important aspects of the ADA coordinator's job is to identify the various players needed for this team effort. While each school system will have its own considerations and requirements regarding team formation, the following criteria should be considered in establishing the compliance team and structure:

1. *Include representatives from all major organizational units.* Each department or other major organizational unit should designate a liaison to the compliance team. Liaisons should participate in overall planning and decision making, collect information regarding their respective departments' policies and practices, inform staff within their departments of ADA requirements, and serve as contact persons for the public within that department.

   For large school districts, more than one level of a compliance team may be needed to ensure adequate representation and information flow. There may be three types of teams for larger school systems: an executive committee that directs the compliance effort and makes executive-level decisions related to the process; an ADA compliance team that oversees the effort, setting and monitoring system-wide deadlines for specific activities; and working subcommittees for each functional area of the ADA that address specific components of the self-evaluation (for example, employ-

ment, program accessibility, policies and practices, and communication). Depending on your school system's structure, you may want subcommittees to address more than one functional area.

2. *Include persons with special skills and expertise.* Including staff and/or outside parties with skills and expertise in the following areas will be particularly helpful to the team:

   - capital planning and budgeting;
   - general program operations;
   - communications technology;
   - computer technology; and
   - disabilities.

   In addition, representatives of the following offices or activities are essential:

   - facilities management;
   - employment/personnel management;
   - finance and budgeting;
   - contracts and purchasing;
   - food services; and
   - special education.

   This list is not intended to be complete; rather, these examples should start you off as you plan your particular approach.

3. *Include opinion leaders.* Include "opinion leaders" on the compliance team. People who are respected by their colleagues will strengthen cooperation, improve participation during the compliance process, and promote effective institutionalization of the results.

4. *Involve people with disabilities.* Individuals with disabilities are key to achieving ADA compliance for several reasons. First, the regulation requires that you provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the self-evaluation and transition plan [28 C.F.R. §§ 35.105(b) and 35.150(d)(1)]. Second, involving the end users in the process will generate solutions that are creative and effective. Third, involving people with disabilities in decision-making will strengthen the accountability of the process and ensure wise use of limited public resources.

Simply having a disability does not, in and of itself, guarantee quality input in the self-evaluation process. People chosen to participate should have either disability-oriented expertise or applicable skills that will help address one or more areas of the self-evaluation. An effective participant should be able to repre-

sent not only his or her personal perspective, but also that of as broad a constituency as possible within the disability community. The process as a whole should provide for representation of as wide a range of individuals with disabilities as possible.

School systems are often wary of inviting outside parties to participate in reviews such as the self-evaluation. The experience of many school systems, however, has demonstrated that the participation of people with disabilities and disability organizations creates trust and leads to more cost-effective solutions and fewer disputes in the long run.

If you are unsure of how to identify disability organizations to assist in the self-evaluation, federally funded regional Disability and Business Technical Assistance Centers may be able to provide a list of organizations in your area. (See *Resources.*) Another approach is to place a notice in the newspaper or on the radio asking local individuals and organizations to participate.

Worksheet 3–2 will assist you in thinking through and recording membership for compliance teams. Option One is intended for smaller school systems that consist of units that operate fairly independently from one another. It assumes that each unit within the school district will be carrying out all of the tasks associated with the ADA self-evaluation under a unit-specific organizational leader. The worksheet asks for the name of the top policy-maker within each unit and for the liaison to the ADA compliance team who will represent that unit. This may be the same person as the top policy–maker or it may be a designated representative of that person.

Option Two is intended for larger school districts. This option assumes that there is an executive committee, a compliance team, and functional subcommittees.

Examples of participants for each group include the following:

Executive Committee: *Persons with oversight responsibilities for the school system as a whole, such as the personnel director, representatives of the supervisory board (or similar oversight structure), the director of finance, the director of affirmative action/EEO, representatives of key organizations familiar with the needs and concerns of persons with disabilities, and of course, the ADA coordinator.*

ADA Compliance Team: *This team will plan and coordinate the compliance effort, including selecting the approach and worksheets for each area of the self-evaluation. Chaired by the ADA coordinator, this team should have broad cross-*

cutting representation from all major programs. It is suggested that the team also include persons with disabilities.

It is also possible to have the executive committee take on the work of the compliance team; however, many school systems may have senior officials who will not have the time required to attend to the details of planning and implementing the compliance effort.

In addition, some school systems may wish to appoint task-specific subcommittees. These could include the following:

- **Policies and Practices Subcommittee:** This team would be responsible for reviewing policies and practices that govern the provision of free appropriate public education and policies and practices that govern programs, activities and services of public school systems. Team members should include persons who are familiar with policies and practices, such as regular and special education senior staff, school psychologists, coordinators for special events and after-hours programs, and coordinators for athletics and other major program areas. (See Chapter Four, *General Nondiscrimination Requirements.*)

- **Employment Subcommittee:** This team would be responsible for reviewing employment-related policies and procedures and recommending changes to those found to be discriminatory. Team members should include persons who are familiar with employment-related policies and procedures. (See Chapter Five, *Requirements for Employment Policies and Practices.*)

- **Program Accessibility Subcommittee:** This team would be responsible for examining facilities used for programs to ensure that they are accessible to individuals with disabilities. Team members should include individuals with responsibilities for capital planning, parking, facilities design, facilities maintenance, space planning, and the planning and scheduling of events. (See Chapter Six, *Program Accessibility.*)

- **Communication Subcommittee:** This team would be responsible for ensuring that "equally effective communication" is available for individuals with disabilities at academic programs, parent-teacher organization meetings, public events, libraries, and other school system programs and activities. Team members should include individuals familiar with auxiliary aids and services, telephone placement and use, telecommunications, computer facilities, library research and other facilities, and persons responsible for planning parent-teacher organization meetings and public events. (See Chapter Seven, *Requirements for Effective Communication.*)

Once the ADA compliance team membership has been approved by the senior political and executive leadership, the ADA coordinator should set up an initial team meeting for the executive committee and/or compliance team. In the first meeting it may be useful to provide background information. All team members should receive copies of this self-evaluation guide, the *Americans with Disabilities Act Title II Technical Assistance Manual* and any draft worksheets preselected for use in reviewing current procedures, practices, and services. (To obtain copies of the *Americans with Disabilities Act Title II Technical Assistance Manual*, contact the U.S. Department of Justice. See *Resources*.) The team can then proceed to review and revise the proposed compliance work plan. Based on the compliance plan, the team can form any additional committees needed to refine the compliance process, develop or refine assessment tools, and recruit additional participants. The team should also establish a schedule for conducting compliance activities.

Early on, the team should attend an ADA training program, either in-house or off-site. ADA training programs are available from a number of sources. Many entities have people on staff, advisory boards, or commissions and nearby community organizations that can contribute to staff development and training. A variety of outside ADA training opportunities, materials, and consultants are also available. Referrals to training and consulting sources are available through the regional Disability and Business Technical Assistance Centers. (See *Resources*.)

A word of caution, however, is in order: An industry of instant experts has sprung up around the ADA. Check references and credentials carefully when selecting ADA training or consultants. For more information, request the "ADA-Related Consultant/Contractor Guidelines" from the Disability and Business Technical Assistance Centers.

Even before the team is assembled, the ADA coordinator will want to draft a compliance process work plan. Once the compliance team is in place, its first major task will be to refine that work plan and, upon approval, proceed to implement it.

> ***Worksheet 3–3 is intended to help your school district monitor completion of important activities in the self-evaluation process.***

Develop an Overview of School System Programs

Since the compliance team must oversee compliance efforts throughout the school system, team members need a way of "getting the big picture" quickly. Many of them may be thoroughly familiar with their own programs, but not with other programs. One way to gain this familiarity is to ask for prelimi-

nary documentation and summaries from each program area. This information will help the team identify potential areas of concern and recognize the unique features of different program areas that must be taken into account as worksheets are developed or adapted for use in the self-evaluation.

Collecting policy and procedures manuals will also provide the team with useful resources as it plans the policies and practices review. At the end of the planning phase, you should have a compilation of the school district's policies in all the various forms in which they may appear — manuals, policy directives, administrative directives, guidance memoranda, and even unwritten policies.

The unit you define as a "program" will depend on the number and complexity of programs and activities within your school system and the extent to which they are similar or different from one another (among other factors). The preliminary information you collect during the planning phase of the self-evaluation process will serve as a convenient summary for future reference.

In addition, the programs, activities, and services you list will be those you intend to audit as units during the self-evaluation process. Some school systems perform this audit by sending survey forms to be completed by the designated contact; others use volunteer interviewers; still others hire consultants. For most school systems, examples of audit areas (besides the delivery of specific educational programs) would include, for example, such diverse areas as security, athletics, food service, public events, student health, counseling, and library services.

> ***Worksheet 3–4 will help you list, then collect, preliminary information from programs, activities and services throughout your school system. Part I of this worksheet simply asks you to list these programs, activities, and services and indicate a contact person for each (the person to whom you would send the request for information presented in Part II). Part II may be used to provide concise descriptions of programs, activities and services. It may also be used to collect information on policies and procedures used by these programs, activities and services.***

Worksheet 3-1 ORIENTATION AND PROJECT START-UP

SCHOOL DISTRICT: _____

NAME (ADA coordinator): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Check off each task in the orientation and start-up phase of ADA compliance as it is completed:

- ❒ Reviewed the ADA statute and regulations
- ❒ Attended an ADA training program

  Provider:

  Date:
- ❒ Reviewed the school system's Section 504 documents and plans
- ❒ Discussed compliance with key staff and community leaders (attach a list)
- ❒ Recruited/convened team members
  - ❒ Executive committee (if applicable)
  - ❒ Compliance team
  - ❒ Subcommittees (if applicable)
- ❒ Drafted compliance work plan

  Date approved:_____
- ❒ Oriented and trained team and committee members
- ❒ Listed key programs, activities, and services within the school system
- ❒ Prepared concise descriptions for key programs, activities, and services
- ❒ Collected and documented policies and practices for key programs, activities, and services
- ❒ Drafted notice and publicity procedures
- ❒ Notice reviewed and approved
- ❒ Implemented notice
- ❒ Drafted grievance procedures and publicity procedures
- ❒ Grievance procedures reviewed and approved

  Date implemented:_____

Worksheet 3-2 (OPTION 1) COMPLIANCE TEAM IDENTIFICATION

SCHOOL DISTRICT: _____

NAME (ADA coordinator): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Use this worksheet (Option 1) to identify your compliance team if you intend to use one central team to direct the self-evaluation.

Compliance team's role or mission in ensuring ADA compliance:

Meeting frequency/location:

Procedures for convening compliance team:

Department or Program	Top Policy Maker	Compliance Team Liaison

Worksheet 3-2 (OPTION 2) COMPLIANCE TEAM IDENTIFICATION

SCHOOL DISTRICT: _____

NAME (ADA coordinator): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Use this worksheet (Option 2) to identify the compliance team if you intend to use an executive committee in addition to a compliance team.

(1) Executive Committee's role or mission in ensuring ADA compliance:

Meeting frequency/location:

Procedures for convening executive committee:

EXECUTIVE COMMITTEE MEMBERSHIP			
Member Name	**Title**	**Oversight Area**	**Notes**

(2) Compliance team's role or mission in ensuring ADA compliance:

Meeting frequency/location:

Procedures for convening compliance team:

COMPLIANCE TEAM MEMBERSHIP		
Department or Program	**Representative**	**Special Expertise**

Worksheet 3-3 DEFINING AND MONITORING THE COMPLIANCE PROCESS

SCHOOL DISTRICT: _____

NAME (ADA coordinator): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

List each step in the self-evaluation process identified by the compliance team. Note the associated worksheets selected for use and identified target dates for completion of worksheets. Record the actual date of completion as each activity is finished.

Compliance Step	Worksheet Number	Completion Date	
		Target	Actual

Worksheet 3-4 SUMMARIZING PROGRAMS, ACTIVITIES, AND SERVICES

SCHOOL DISTRICT: _____

NAME (ADA coordinator): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

List all programs, activities and services and the contact persons for providing the information requested on the following page. Send the request for information to the designated contact persons with a cover memorandum that explains its purpose, lists the person to whom the form should be returned, and discusses any other necessary administrative information.

Part I. List of Programs, Activities, and Services

Program, Activity, or Service	Contact

Part II. Request for Program, Activity, or Service Summary

*Please provide a concise description of your program area that includes the following basic information. Summaries should be returned to the ADA coordinator by the following date:*_____

Policies and Procedures

1. List and provide copies of basic policies and procedures for your program area. These policies and procedures may be in the form of written policies, manuals, policy directives, guidance memoranda, or even unwritten policies.

Contracting and Staffing

1. Indicate what role, if any, contractors play in your program area.

2. Indicate what role, if any, other non-employees play in your program area.

3. Indicate any unique features of your program area's employment policies and requirements.

Facilities Used by the Program Area

4. Please list all facilities your program area uses.

Communications

5. Please indicate briefly how each of the following are used in your program. Of interest is who (in general terms) uses these forms of communication, for what purpose, and approximately how frequently.

    - Telephone access
    - Libraries or reading rooms
    - Automated equipment, including computers
    - Audio-visual presentations (television, tapes, etc.)
    - Meetings and presentations
    - Books and other printed material

6. Please list the normal means by which your program area communicates policies and other key information to staff and to students.

CHAPTER FOUR

GENERAL NONDISCRIMINATION REQUIREMENTS

Chapter Four describes general nondiscrimination requirements that should be used to analyze whether the programs, policies, and practices of a public school system comply with Title II. These requirements apply to all operations, services, benefits, programs, and activities of a school district.

As we have noted, the more specific requirements imposed on a school district under Section 504 are applicable under Title II wherever necessary to ensure that Title II is interpreted in a way that is consistent with the intent of the ADA (see Chapter One). The obligations of a school district, specifically described under Section 504, to provide a free appropriate public education (FAPE) to school-age individuals with disabilities, regardless of the nature or severity of their disabilities, are incorporated in the general provisions of Title II that are discussed in this chapter [28 C.F.R. § 35.130; 28 C.F.R. § 35.103(a); see 34 C.F.R. §§ 104.31–104.37]. Therefore, as a school district evaluates its compliance with the general prohibitions against discrimination, it must consider the specific issues that govern the provision of appropriate educational services to school-age individuals with disabilities (FAPE); these specific requirements must be addressed separately from those pertinent to services provided to other individuals with disabilities (such as parents and the general public). Throughout the chapter, we will point out areas in which a two-prong analysis will be appropriate.

Chapter Four begins with an overview of the requirements for ensuring FAPE for school-age individuals with disabilities that are part of the general prohibitions section of Title II. Because school districts have been implementing these requirements for many years, the purpose of this overview is to establish a frame of reference within which the general prohibitions of Title II may be considered, rather than to discuss FAPE requirements in a comprehensive manner.

The chapter then reviews each of the requirements of the regulation in sequence. Among major topics addressed in the chapter are the applicability of the regulation; its basic equal opportunity requirements; the obligation to make reasonable modifications in policies, practices, and procedures; and eligibility requirements.

The chapter concludes with worksheets designed to assist school systems in their self-evaluation of policies and practices. Two survey instruments are provided, one of which deals with issues related to FAPE and one of which deals with nondiscrimination

requirements pertinent to a broader range of constituents (such as parents and members of the general public).

OVERVIEW OF FAPE REQUIREMENTS THAT ARE INCORPORATED IN GENERAL PROHIBITIONS

Provision of FAPE requires a school district to provide regular or special education and related aids or services that are: (1) designed to meet the individual needs of persons with disabilities as adequately as the needs of nondisabled persons are met; and (2) able to satisfy requirements, outlined below, regarding educational setting, evaluation and placement, and due process safeguards. Examples of related aids and services that may be provided to individuals with disabilities in either regular or special education programs include: interpreters for students with hearing impairments; readers for students with visual impairments; equipment and equipment modifications to accommodate the needs of students with mobility impairments, manual impairments, hearing impairments, or visual impairments; speech therapy; psychological services; physical and occupational therapy; school health services; or school social work services.

A school district must provide an appropriate public education to a person with a disability without cost to the person or to his or her parents or guardians, except for those fees that are also imposed on nondisabled persons or their parents or guardians.

FAPE requirements also govern the selection of educational settings for school-age individuals with disabilities. As discussed on pages 63–64, while a placement team can select a placement for a student with a disability from a range of options, the placement team must ensure that the selected placement provides for the student's education with nondisabled students to the maximum extent appropriate to the needs of that student. A school district must place an individual with a disability in the regular educational environment operated by the school district unless the school district shows that, even with the use of supplementary aids and services, the individual's education cannot be achieved satisfactorily in that setting.

Depending on the needs of an individual child, an appropriate education may consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. If a school district is unable to provide a child with a disability with an appropriate education, and the district places the child or refers the child to a program it does not operate, the district is still responsible for ensuring that the education offered is in compliance with all requirements related to the provision of FAPE, including

ensuring that the education is provided at no cost to the child or the child's parents.

A school district must provide children with disabilities with an opportunity to participate in nonacademic and extracurricular services and activities equal to that provided to nondisabled children. With respect to nonacademic services and activities for persons entitled to FAPE, a school district must ensure that each individual with a disability participates with nondisabled individuals to the maximum extent appropriate to the needs of that individual. Nonacademic and extracurricular services and activities include meals, recess, counseling services, recreational activities and athletics, transportation, clubs sponsored by the school, and referrals to outside agencies, including employment agencies. A school district must provide nonacademic and extracurricular activities in a manner that ensures that individuals with disabilities have an equal opportunity to participate.

In order to ensure the provision of FAPE to school-age children, a school district must establish standards and procedures for the evaluation and placement of persons who, because of disability, either need or are believed to need special education and/or related aids and services. An evaluation must be conducted before the child's initial placement in regular or special education as well as before any subsequent significant change in that placement. A school district is also required to periodically re-evaluate students who have been provided special education and/or related aids and services.

With respect to evaluation procedures, a school district must ensure that:

1) tests and other evaluation materials have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by their producer;

2) tests and other evaluation materials are tailored to assess specific areas of educational need and not merely designed to provide a single general intelligence quotient; and

3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level (or whatever other factor the test purports to measure) rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

With respect to placement procedures, in order to ensure FAPE, a school district must take the following steps in interpreting evaluation data and in making placement decisions:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical conditions, social or cultural background, and adaptive behavior;

2. Establish procedures to ensure that information obtained from all sources is documented and carefully considered;

3. Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child and the meaning of the evaluation data and placement options; and

4. Ensure that the placement decision complies with the requirements outlined above regarding educational setting.

When the school district has identified the educational and related services needed by a child with disabilities, it must describe the program in writing, and it must provide services as described in the written plan.

In order to ensure the provision of FAPE, a school district is required to implement a system of procedural safeguards to be afforded to parents and guardians with respect to any action regarding the identification, evaluation, and placement of children who, because of disability, need or are believed to need special education or related services. At a minimum, the due process procedures must afford parents and guardians:

1. notice;

2. a right for parents and guardians to inspect relevant records;

3. an impartial hearing with an opportunity for participation by parents and with a right to representation by counsel; and

4. a review procedure.

The due process procedures described in the Individuals with Disabilities Education Act (IDEA) are one means of meeting the due process requirements and are recommended to school districts as a model.

Because school districts have specific responsibilities related to the provision of a free appropriate public education to school-age individuals with disabilities, it will in some instances be necessary for a school district to perform a two-prong analysis of its programs, operations, benefits, and services:

1. an analysis of programs, operations, benefits, and services provided by the district to anyone, including school-age children with disabilities; and

2. an analysis of education programs, operations, benefits, and services provided to school-age students with disabilities in connection with the provision of FAPE.

The discussion of the general prohibitions that follows will provide advice as to when the two-prong approach will be necessary and, where applicable, will provide examples showing application in a context where FAPE is required and in a context where FAPE is not required.

GENERAL PROHIBITIONS AGAINST DISCRIMINATION

Applicability. A school district must ensure that no qualified individual with a disability is, on the basis of disability, excluded from participation in or denied any benefit of its services, programs, or activities, or subjected to any other discrimination [28 C.F.R. § 35.130(a)].

28 C.F.R. § 35.130 General prohibitions against discrimination.
(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The requirement to ensure that qualified individuals with disabilities are not discriminated against in public school programs is applicable to the programs, activities, services, and operations that are operated or provided directly by public school districts, as well as those operated or provided by another entity on behalf of the public school district under contractual or other arrangements [28 C.F.R. § 35.130(b)(1)]. This means that in conducting the self-evaluation it is necessary to evaluate programs, activities, services, and operations that are provided by another entity on behalf of the school district through contractual or other arrangements as well as those provided directly by the school system.

For example, a school district that operates its own bus transportation program to transport elementary and secondary students between home and school may not exclude students with severe visual disabilities, on the basis of disability, from taking the bus. If the same school district contracted with a private company to take over the operation of its bus transportation program, it continues to be responsible for nondiscrimination in the bus program. Accordingly, if the private bus company excluded a student from service on the basis of the student's disability, the school district would be liable under Title II for that discrimination, even where the private bus company also was liable for discrimination under a law other than Title II.

Basic Equal Opportunity Requirements

28 C.F.R. § 35.130(b)(1)
A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.

Denial of Opportunity to Participate or Benefit Prohibited. A public school system must ensure that no qualified individual with a disability is, on the basis of disability, excluded from participation in, or denied any benefit of, its services, programs, or activities, or subjected to any other discrimination [28 C.F.R. § 35.130(a)]. This means that, in providing general benefits and services, a public school district must take steps to ensure that a qualified individual with a disability is not denied the opportunity to participate in any of its programs or to benefit from any aid, benefit, or service that it provides. With respect to school-age individuals with disabilities, a public school district must ensure that no student is denied a free appropriate public education [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(1)(i)].

A school district's obligation not to discriminate against qualified individuals on the basis of disability extends to the appointment of members to planning or advisory boards [28 C.F.R. § 35.130(b)(1)(vi)].

EXAMPLES:
Are these individuals with disabilities subjected to discrimination on the basis of disability?

1. *In an effort to increase parental involvement, a school district invites parents of students to volunteer as classroom aides to perform a variety of tasks, including distributing and collecting materials and escorting groups of students to the playground, the library, and the lunchroom. A parent with a speech impairment volunteers, but is denied the opportunity because of his disability. This is a violation of Title II.*

2. *The parents of a high-school-age student with a behavioral disorder seek to enroll the child in the local high school. The school district determines, without using the required procedures related to evaluation and placement, that the child may not enroll in the regular program, but, rather, must be provided with educational services at home. The school district has failed to follow the requirements related to provision of a free appropriate public education and has denied this student an equal opportunity to participate in the education program, in violation of Title II.*

Provision of Unequal Opportunity or Benefit Prohibited. A public school district must also ensure that, in providing general services and benefits, a qualified individual with a disability is provided an opportunity to participate in its programs that is equal to the opportunity that is provided to nondisabled persons to participate. A school district must also ensure that a qualified

individual with a disability is provided with an opportunity to benefit from any aid, benefit, or service that is provided under its programs that is equal to the opportunity that is provided to nondisabled individuals.

With respect to school-age individuals with disabilities, this requirement incorporates the responsibility of a school district to ensure that school-age individuals with disabilities are provided a free appropriate public education in accordance with the principles outlined above [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(1)(ii)].

28 C.F.R. § 35.130(b)(1)
A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(ii) *Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.*

EXAMPLE:
Does this school policy discriminate against a parent with a disability?

A school sends out a notice to parents, asking that they volunteer to accompany the class on various field trips throughout the year. The request is conditioned by a statement that for "insurance reasons" parents with disabilities may not serve as chaperons.

This policy violates Title II, because the opportunity to participate in their child's field trips is denied to all parents with disabilities. Thus, the opportunity provided to those parents with disabilities who would be qualified to participate in the field trips is unequal to the opportunity provided to nondisabled parents.

EXAMPLES:
Are these children receiving unequal opportunities or benefits?

1. *A school district has evaluated a child with a disability and determined that, in order to provide a free appropriate education to the child, the child must be provided with bus transportation and must participate in the school educational program for the full instructional day. However, the district's transportation policies for students with disabilities result in the provision of a shorter instructional day for this student than is provided for nondisabled students. The transportation policy causes this child to be denied, on the basis of disability, an opportunity to participate in the full instructional day that is equal to the opportunity provided to nondisabled students, and thus denies the child a free appropriate public education in violation of Title II.*

2. *A child with a profound hearing disability is evaluated, and it is determined that, in order to provide a free appropriate public education, related aids and services*

including a sign language interpreter, must be provided. The school district, citing expense, refuses to pay for the sign language interpreter. Where a related aid or service is found to be necessary to the provision of a free appropriate public education, denial of the related aid or service causes the child to be denied, on the basis of disability, an opportunity to participate in or receive benefits under the program that is equal to that provided to nondisabled students, and is thus in violation of Title II.

28 C.F.R. § 35.130(b)(1)
A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(iii) *Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.*

Provision of Benefit or Service That Is Not Equally Effective Prohibited. In providing general services and benefits, a school district must ensure that services provided to qualified individuals with disabilities are effective enough to afford equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as nondisabled individuals.

With respect to school-age individuals with disabilities, this requirement incorporates the responsibility of a school district to ensure that school-age individuals with disabilities are provided a free appropriate public education in accordance with the principles outlined earlier [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(1)(iii)].

EXAMPLE:
Are the benefits or services provided "equally effective"?

1. *A school sponsors an exhibit of art produced by high school students. A parent with a vision impairment cannot see the sculptures created by his son, and requests that the school permit him to touch the sculptures. Although the sculptures would not be damaged by touching, the school informs the parent that the art must remain in the display case and that persons attending the exhibit may not touch the artwork.*

   Whereas nondisabled individuals can appreciate the sculptures simply by looking at them, the parent with the vision impairment can appreciate them only by touching them. Thus, the school's response does not ensure that the parent has an equal opportunity to obtain the same result or gain the same benefit as that provided to nondisabled persons. Clearly, the benefit provided to the parent is not "equally effective."

2. *A child with a learning disability is evaluated, and it is determined that the child can participate in the regular education program with certain modifications, such as being permitted additional time in which to take tests. Any action inconsistent with this determination, such as a teacher's denial of additional time to take a test, would*

result in provision of an educational service to this student that was not effective enough to afford him an equal opportunity to reach the same level of achievement as nondisabled students.

Programs. Under Title II, a school district may not operate separate or different programs, or provide separate or different benefits or services within programs, for individuals with disabilities, unless such programs, benefits, or services are necessary to provide benefits to persons with disabilities that are equally as effective as those provided to nondisabled persons [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(1)(iv)]. Even when separate programs, benefits, or services are permitted under Title II, a school district must provide them in the most integrated setting appropriate to the needs of qualified individuals with disabilities [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(d)].

In conducting the self-evaluation, a school district must evaluate any separate or different programs, benefits, or services provided to individuals with disabilities. However, because there are specific requirements for providing FAPE to school–age children, a school district should evaluate any separate or different programs related to the provision of educational services to school-age children both under the requirements applicable to all individuals with disabilities and in accordance with the specific requirements of FAPE. These requirements are discussed separately in the sections that follow.

(1) Separate or Different Programs—General

School districts must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130 (d)]. However, a school district may offer separate or special programs when necessary to provide individuals with disabilities an equal opportunity to participate in the program or benefit from its services. Any such separate or special program must be specifically tailored to meet the needs of the individuals with disabilities for whom it is provided.

Separate programs may not be established based on stereotypes or presumptions about what a class of individuals with disabilities can or cannot do. However, even where the school district operates a permissibly separate program or offers a permissibly separate service or benefit, it may not deny participation in the regular program or provision of the regular service or benefit to any qualified individual with a disability [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(2)]. The determination as to whether an individual with a disability is qualified to participate in the regular program must necessarily take into account other requirements of Title II, such as making reasonable modifications in policies, programs, and practices, providing auxiliary aids,

28 C.F.R. § 35.130(b)(1)

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability —

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others....

(2) *A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.*

and ensuring program accessibility.

It is also important to note that persons with disabilities have the right to decline accommodations, aids, or services, including those that might be offered to individuals with disabilities participating in regular programs [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130 (e)]. For example, a parent with a hearing impairment may choose to decline special front-row seating at parent–teacher organization meetings. However, if individuals decline accommodations necessary to enable them to participate in a program and are unable to meet the essential eligibility requirements of the program without the accommodations, they would not be "qualified individuals with disabilities." Of course, individuals with disabilities have the right to provide their own accommodations, aids and services, which may enable them to be qualified to participate in a program.

(2) Separate or Different Programs — Education of School-age Children

A school district may offer separate or special programs when necessary to provide school-age individuals with FAPE, subject to the requirements discussed earlier regarding educational setting, evaluation and placement requirements, and procedural safeguards. As outlined earlier, a school district must offer academic and nonacademic programs, benefits, and services in the most integrated setting appropriate to the needs of the individual with disabilities. In providing permissibly separate or different programs, benefits, or services for school-age individuals with disabilities (such as physical education courses or athletics activities), a school district must ensure that no qualified individual with a disability is denied the opportunity to also participate in the program, or to receive the service or benefit, that is *not* separate or different.

EXAMPLES:
Are these separate or different programs permissible?

1. *The school district sponsors recreational leagues for adults. One of the leagues is a separate basketball league for individuals who use wheelchairs.*

   As long as the school district permits individuals with disabilities who use wheelchairs to participate in other recreational leagues for which they are qualified, the separate wheelchair basketball league is permitted.

2. *A child with mental retardation is evaluated, and it is determined that the academic setting most appropriate to her needs is a special education program. It is further determined that the child should participate in recess, physical education, and lunch with nondisabled students.*

As long as the evaluation and placement in the separate special education program are consistent with the requirements related to the provision of FAPE outlined earlier, and as long as the child has an opportunity to participate in nonacademic activities in accordance with the determination, the placement in the separate special education program is consistent with Title II.

Surcharges Prohibited

Title II prohibits placing surcharges on individuals with disabilities to cover the cost of measures necessary to provide nondiscriminatory treatment [28 C.F.R. § 103(a); 28 C.F.R. § 35.130(f)].

As discussed above in connection with the obligation of a school district to provide FAPE to school-age children, the district must provide FAPE without cost to the person with a disability or to his or her parents.

EXAMPLE:
Are these surcharges prohibited under Title II?

1. *A child with cerebral palsy is evaluated and it is determined that he should be placed in a regular educational program with related aids and services, including use of a computer at school and at home. The child's parents are sent a bill for the lease of the computer from the school district.*

   The school district's action is illegal. The district may not charge the student or his parents for the computer or any other related aid or service necessary to provide a free appropriate public education.

2. *The high school dramatic society puts on a series of plays under school sponsorship to which the entire local community is invited. In a discussion with school officials, it is suggested that a one-dollar surcharge be placed on tickets sold to individuals with hearing impairments to help defray the cost of the new assistive listening devices. Any such surcharge would be a violation of Title II.*

With respect to qualified individuals with disabilities, a school district is prohibited from placing surcharges on any such individual. This means, for example, that a school district that provides an auxiliary aid to an individual with a disability in order to enable that individual to participate in the program effectively may not charge the individual for the auxiliary aid. A school district may, however, charge individuals with disabilities the same fees for services, programs, and events that it charges

individuals without disabilities.

Reasonable Modifications in Policies, Practices, or Procedures

28 C.F.R. § 35.130(b)(7) *A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.*

A school district must make reasonable modifications to its policies, practices, and procedures when such modifications are necessary to ensure that a qualified individual with a disability is not discriminated against on the basis of disability [28 C.F.R. § 35.130(b)(7)]. Evaluation of this requirement by a school district necessitates the two-prong analysis outlined above, in which the specific requirement for the school district to provide FAPE to school-age children is considered separately from the general provision that is applicable to *all* qualified individuals with disabilities. For this reason, we will discuss reasonable modifications in general terms and in regard to FAPE separately.

Reasonable Modifications in Policies, Practices, and Procedures—General. In conducting a self-evaluation of its policies, practices, and procedures, a school district must determine the effect of each one on individuals with disabilities. Where a school district identifies a policy, practice, or procedure that has any type of discriminatory effect on individuals with disabilities, the district is required to modify it unless the modification would not be "reasonable." A modification of a policy, practice, or procedure would not be reasonable where the district can demonstrate that the modification would "fundamentally alter" the nature of the particular service, program, or activity affected.

Each school district must examine its policies, practices, and procedures related to the provision of services, benefits, and programs. Wherever these services, benefits, and programs are not accessible to qualified individuals with disabilities because of policies, practices, and procedures, the school district must identify modifications that would enable the district to meet all substantive requirements to ensure equal opportunities for individuals with disabilities.

EXAMPLE:
Has this school failed to make a reasonable modification of the school's policies, practices, or procedures?

A school requests that adults in the community volunteer to tutor "at risk" students in a variety of subjects. In order to ensure that volunteers possess the necessary subject matter expertise and to best match volunteers and students, the school requires, as part of the application process, that volunteers take a written test to demonstrate their knowledge of subject matter. Tests are administered under timed conditions. An individual with a learning disability applies to volunteer as a tutor. She submits references and documentation to show

that she has subject matter expertise and prior successful experience in tutoring the particular subject. She also submits documentation to show that, due to her learning disability, she would need additional time for completing the test. The school indicates that it is unwilling to modify its policy regarding the time for completing the test.

The individual seeking to volunteer has been denied an opportunity to participate in the tutoring program because of a failure to make a reasonable modification in the application procedures for this program. Providing this modification would not fundamentally alter the nature of a service, program, or activity. Therefore, the school's decision was illegal.

Reasonable Modifications in Policies, Practices, and Procedures—Application to School-Age Individuals with Disabilities (FAPE). As part of the required self-evaluation, school districts must assess their policies, practices, and procedures in light of the specific requirement to provide FAPE to school-age children. The fundamental nature of a school district's program involves the provision of elementary and secondary educational services to school-age students, including provision of FAPE to school-age children with disabilities. Consequently, if a failure to modify a policy, practice, or procedure would result in a denial of FAPE to a school-age individual with a disability, a school district may *not* refuse to make this modification on the basis that such modification would constitute a fundamental alteration of the nature of its education program.

Unlike the requirement to provide auxiliary aids in contexts other than FAPE (discussed in Chapter Seven), the obligation to provide related aids and services necessary to the provision of FAPE is *not* subject to the limitations regarding undue financial and administrative burdens or fundamental alteration of the program. (The concepts of "undue burdens" and "fundamental alteration" are discussed in Chapter Seven.)

EXAMPLE:
Is this child denied FAPE because of a failure to provide reasonable modifications in school policies and practices?

A school district has a regular school year of 10 months. A child with developmental disabilities is evaluated and it is determined that placement in a 12-month program is appropriate. The school district makes an administrative decision that it does not wish to allocate limited funds to 12-month programs and cancels them. Instead, it places the child in a special 10-month program.

To comply with Title II, the school district must ensure that this child is provided with educational services for 12 months.

Eligibility Criteria

28 C.F.R. § 35.130(b)(8) *A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.*

A school district may not use eligibility criteria for participation in its programs or receipt of its benefits or services that directly or indirectly screen out individuals with disabilities, or that directly or indirectly cause individuals with disabilities to be denied full and equal participation, services, or benefits, *unless* the eligibility criteria are necessary for the provision of the service, program, or activity being offered [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(8)]. Because a school district has specific requirements to provide FAPE to school-age children with disabilities, as outlined below, a school district should use a two-prong analysis in evaluating whether its eligibility requirements comply with Title II.

General. In assessing general eligibility requirements, it is necessary to recall that an individual with a disability who meets the essential eligibility requirements for the receipt of services or participation in a program is "qualified" to receive services from the district or participate in a district program. This is true regardless of the terms of that participation — that is, with or without reasonable modifications to rules, policies, or practices; with or without the removal of architectural barriers; and regardless of whether auxiliary aids or services are provided. Accordingly, the self-evaluation process must determine whether there are eligibility requirements that affect individuals with disabilities adversely, and, if so, whether those requirements are necessary for the provision of the service, benefit, or program.

The school district must first determine: (1) whether it imposes any eligibility requirements *directly* on the basis of disability that screen out, restrict, or segregate individuals with disabilities; (2) whether it imposes any eligibility requirements that, although not based on disability, *indirectly* screen out, limit, or segregate individuals with disabilities; or (3) whether it imposes any eligibility requirements that place a requirement or burden on individuals with disabilities that is not placed on others.

In each case in which the school district identifies an eligibility requirement that adversely affects individuals with disabilities in any of the ways outlined above, the school district must determine if the eligibility requirement is essential. These determinations must be made on a case-by-case basis, using facts related to the particular service, benefit, or program, and considering what is essential to the purpose of the particular service, benefit, or program offered by the district.

As noted above, where an individual with a disability can meet the essential eligibility requirements related to receipt of services or participation in the program — with or without reasonable modifications — he or she is "qualified." Such an individual may not be screened out or limited because of difficulty in performing

tasks that bear only a marginal relationship to the purpose of the service, benefit, or program. Note, however, that a school district is not required to eliminate those requirements that *are* necessary to the provision of the service, benefit, or program.

A school district may impose legitimate safety requirements necessary for the safe operation of its services, benefits, or programs. However, any safety requirement must be based on actual risks, and not on speculation, stereotypes, or generalizations about individuals with disabilities.

EXAMPLES:
Are these eligibility requirements permissible?

1. *A school district sponsors evening non-credit classes in arts and crafts for adults. The application states that individuals with disabilities must submit a doctor's certificate indicating that they are able to participate in the course. The district can make no showing that this blanket requirement is essential. This type of eligibility requirement is in violation of Title II.*

2. *A school district offers an evening non-credit course in scuba diving. The course instructor proposes to prohibit students who use wheelchairs from signing up for the course on the presumption that a person who uses a wheelchair would not be able to swim well enough to participate in the program.*

   Denial of admission to a course based on stereotypes or generalizations about what individuals with disabilities can or cannot do is inconsistent with Title II. However, where a safety requirement can be shown to be necessary based on real risks, it is permissible under Title II even if the requirement would tend to screen out individuals with certain types of disabilities. In the case of the scuba diving course, where the school district can demonstrate that a certain level of swimming ability is necessary for safe participation in the class, the school district may require that all participants in the class pass a swimming test, even if the test would tend to screen out individuals with certain types of disabilities. However, a blanket prohibition such as the one described above would be prohibited.

School-Age Children Entitled to FAPE. With respect to assessing eligibility requirements related to the education of school-age children, the underlying consideration, as discussed above, is that a school district is *required* to provide FAPE to school-age individuals with disabilities. In this regard, the fundamental nature of the school district's education program includes the provision of FAPE to school-age children, in accordance with the

requirements outlined above related to educational setting, evaluation and placement, and procedural safeguards.

EXAMPLE:
Is this restriction on related aids and services permissible?

A school district limits eligibility for related aids and services, such as occupational therapy or physical therapy, to individuals with disabilities who are enrolled in the special education program. This eligibility requirement denies related aids and services that are necessary to fulfillment of the obligation to provide a free appropriate public education to all individuals with disabilities who are enrolled in the regular education program, but who have been determined, in accordance with the requirements related to the provision of FAPE, to need related aids or services. Thus, this eligibility requirement is inconsistent with Title II.

Effect of Policies and Practices (Criteria or Methods of Administration)

28 C.F.R. § 35.130(b)(3)
A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

A school district may not use "criteria or methods of administration" that result in discrimination on the basis of disability [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(3)]. As discussed above, under Title II, a public school system may not have written policies or actual operating practices that exclude qualified individuals with disabilities directly on the basis of their disability. The requirement prohibiting criteria or methods of administration that have the effect of discriminating on the basis of disability means that a school district may not use policies or practices — even where they are not stated in terms of prohibiting participation on the basis of disability or where they are not intended to prohibit or limit participation on the basis of disability — that cause qualified individuals with disabilities to be denied an equal opportunity to participate in a program or to benefit on an equal basis under the program.

In conducting a self-evaluation, a school district must assess the results of policies and practices to determine if any policies or practices: (1) have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; (2) defeat or substantially impair accomplishment of the district's programs with respect to individuals with disabilities; or (3) perpetuate discrimination of one public entity by another when both entities are under common administrative control or are agencies of the same state [28 C.F.R. § 35.130(b)(3)].

Selecting Sites and Locations

In determining the site or location of a facility, a school district may not select a site or location that: (1) has the effect of excluding individuals with disabilities, denying them benefits, or otherwise subjecting them to discrimination; or (2) has the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(4)]. Thus, the site selection procedures of a school district should routinely include an assessment of whether the terrain or any other feature of a site or location under consideration would have any adverse effect on participation by qualified individuals with disabilities.

The requirements concerning the selection of sites and locations do not apply to construction of additional buildings at an existing site. However, any such facilities must be made accessible in accordance with the requirements for new construction discussed in Chapter Six.

Significant Assistance to Entities That Discriminate

School districts must identify agencies, organizations, and persons to whom the school system provides "significant assistance" and determine whether, through that assistance, they may be aiding or perpetuating discrimination against qualified individuals with disabilities. Interpretive guidance issued by the U.S. Department of Education in connection with Section 504 states that, in determining whether assistance to another entity is "significant," a school district should consider the substantiality of the relationship between the district and the other entity, including any financial support the district provides, and whether the other entity's activities relate so closely to the district's programs that they should fairly be considered activities of the district.

28 C.F.R. § 35.130(b)(1)
A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program.

EXAMPLE:
Is this school district providing "significant assistance" to an organization that discriminates against persons with disabilities?

A school district permits a national service fraternity to establish a tutoring and mentoring program for "at-risk" students at a junior high school. The school participates with the fraternity in publicizing the program to students, in counseling students to participate in the program, and providing space and supplies for the program. Then the school learns that the fraternity plans to ask students who have applied to the program whether they are HIV-positive and to screen students out of the program on that basis.

The initial relationship between the school district and the fraternity would constitute the provision of "significant assistance" to the fraternity. The school district must inform the service fraternity that it cannot provide "significant assistance" to an organization that discriminates on the basis of disability. If the service fraternity does not eliminate the discriminatory criterion for participation, the school must terminate its "significant assistance."

Procurement Contracts

A school district may not discriminate on the basis of disability in the selection of contractors in any procurement [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(5)]. (This requirement is spelled out more specifically in the Title II regulation, than in the Section 504 regulation.)

EXAMPLE:
Has this school district discriminated in awarding a contract?

A school district rejects the bid of, and refuses to contract with, a food service company to operate its cafeteria because the company employs individuals with physical and cognitive disabilities. The company submitted the lowest qualified bid and is fully qualified to perform all the functions set out in the request for bids. This action is a violation of Title II.

Licenses or Certification

A school district that operates a licensing or certification program may not discriminate against qualified individuals with disabilities on the basis of disability in its licensing and certification activities [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.130(b)(6)]. A school district may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. Although licensing standards are covered by Title II, the licensee's activities themselves are not covered. An activity does not become a "program or activity" of a school district merely because it is licensed by the school district.

Discrimination Based on Association with Persons with Disabilities

Although discrimination based on association with persons with disabilities is covered in the general prohibitions of the Title II regulation, it is discussed in this Guide in Chapter Two.

Exceeding the Title II Requirements

Title II permits a school district to provide benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by the regulation [28 C.F.R. § 35.130(c)]. This means that school districts may provide programs, services, and benefits that are designed only to benefit individuals with disabilities without incurring additional obligations to nondisabled persons or to other classes of individuals with disabilities.

EXAMPLE:
Is this special program prohibited under Title II?

A school has organized an after-school study group with tutoring assistance to encourage students with learning disabilities in their academic subjects. In order to encourage these students to read as much as possible, one component of the program encourages the students to bring in personal projects that involve reading, but are not related to the school's program, for assistance by the tutors. Participation in this program is voluntary and is not included as part of the school's obligation to provide FAPE to any student. The establishment of this program does not require the school to establish a similar program for students with other disabilities or for nondisabled students. It is also important to note that the school may not exclude students with learning disabilities from any other tutoring program in which they are qualified to participate. Moreover, because participation in the special tutoring program is not part of the school's obligation to provide FAPE to any student, the school may not require *any student with a learning disability to participate in this special program.*

ILLEGAL USE OF DRUGS

Although the illegal use of drugs is covered in the general prohibitions of the Title II regulation, it is discussed in this Guide in Chapter Two.

SMOKING

Title II does not affect the right of a school district to prohibit smoking or impose restrictions on smoking in its facilities.

MAINTENANCE OF ACCESSIBLE FEATURES

Although the maintenance of accessible features is covered in the general prohibitions of the Title II regulation, this requirement is discussed in Chapter Six of this Guide.

RETALIATION OR COERCION

Although retaliation and coercion is covered in the general prohibitions of the Title II regulation, this prohibition is discussed in Chapter Two of this Guide.

PERSONAL DEVICES AND SERVICES

In general, Title II does not require school districts to provide personal devices such as wheelchairs, prescription eyeglasses or hearing aids, readers for personal use or study, or services of a personal nature, including assistance in eating, toileting, or dressing [28 C.F.R. § 35.103(a); 28 C.F.R. § 35.135]. This provision serves as a limitation on the school district's obligation to comply with other Title II requirements, including the duty to provide auxiliary aids and services to facilitate communication, and the duty to modify policies, practices, and procedures to ensure accessibility. *This provision does not affect the obligation of a school district to provide a personal device or service in the form of special education or a related aid or service, if that device or service is necessary to provide FAPE to the individual student.*

EXAMPLE:
Is the school district required to honor these requests?

1. *A parent with a severe mobility impairment volunteers to chaperon a class trip. The parent informs the school district that it must provide her with an attendant to assist her in eating, toileting, and dressing. Under the facts of this case, Title II would not require the school district to provide the personal services required by the parent.*

2. *A child with a disability needs clean intermittent catheterization (CIC) in order to participate in a regular kindergarten program. The school district objects to providing this service on the basis that this is a personal service not required by Title II. Because in this case the CIC is a related aid or service that is required to provide FAPE to a school-age child, Title II would require that the CIC be provided.*

IMPLEMENTATION

Public school systems are required to review both written policies and actual operating procedures to ensure that people with disabilities are not subjected to discrimination. School systems can use this self-evaluation review process to organize and review their written and unwritten policies for compliance with Title II. Findings can then be analyzed to identify where changes are needed to permit people with disabilities to participate fully in the full range of programs, activities, and services offered by the school system and enjoy their full benefits.

Title II contains broad prohibitions against discrimination. Because the concerns related to FAPE are distinct and specific, public school systems will need to evaluate policies and procedures that affect school-age children separately from the general policies and practices pertinent to other audiences (such as parents and members of the general public).

The Self-Evaluation Review Form presented in this chapter may be used by a public school system to evaluate its nondiscrimination policies and practices, except in the area of employment. (See Chapter Five, *Requirements for Employment Policies and Practices*). The review form is divided into two sections:

I. Review of Policies and Practices Governing the Provision of FAPE

II. General Review of Policies and Practices that Govern Programs, Activities, and Services of Public School Systems

Seven basic steps to complete a self-evaluation are described below. Steps 1–4 should be completed *before* the Self-Evaluation Review Form is completed (Step 5). Steps 6–7 should be addressed *after* the Self-Evaluation Review Form is completed.

Step 1. Identify the Subcommittee (if any)

Your school district may wish to have the ADA compliance team conduct the policies and practices review or identify a separate policies and practices subcommittee for this purpose. Of course, the ADA coordinator should participate in the review, along with those who have the greatest familiarity with current policies and practices. This generally would include regular and special education senior staff, school psychologists, coordinators for special events and after-hours programs, coordinators for athletics and other major program areas, and those who have the greatest familiarity with issues that have arisen in the past.

> ***Worksheet 4–1 may be used to document the membership of the subcommittee that will review the school system's policies and practices to ensure compliance.***

IMPLEMENTATION

Conducting the Review of Nondiscrimination Policies and Practices

This section describes a process for conducting the following activities:

- **Identify the subcommittee (if any)**
- **List programs, activities, and services**
- **Collect and document policies and practices**
- **Define the survey's scope**
- **Conduct the review**
- **Assess findings and document changes needed**
- **Obtain comments**

Step 2. List Programs, Activities, and Services

In order to conduct your review of policies and practices, you will need a working list of all programs, activities, and services offered by the school system, along with a concise description of each (e.g., purpose, scope, type of activities, number of disabled persons served). If you did not collect this information at the planning phase of your self-evaluation, you will want to collect it before you initiate your self-evaluation for nondiscrimination policies and practices. (See Chapter Three, *Planning for Compliance.*)

Step 3. Collect and Document Policies and Practices

The policies and practices subcommittee will also need to appreciate the "universe" of policies and practices pertinent to school system operations. As for the initial list of programs, if you have collected this information at the planning phase of your process you need not do so again. If you have not, you should ask program area representatives to forward all policy documentation pertinent to programs, activities, services, and practices of the school system. This information may be collected at the same time as program summaries. (See Chapter Three, *Planning for Compliance.*)

Step 4. Define the Survey's Scope

In order to make effective decisions about how best to conduct your review, you need to review the program data received and summarize it in a way the subcommittee can use. By analyzing program information as a subcommittee, you can focus on aspects of programs that need to be examined and determine the conditions that must be present for a person with a disability to fully participate in the various programs, activities, and services of the school system. This preliminary information will help the subcommittee analyze the data returned through the survey and recognize where discriminatory practices are occurring, regardless of whether their effects are intended.

> ***Worksheets 4–2 and 4–3 may be used to perform this preliminary analysis. You will want to fill out all portions of these worksheets except the fourth column, "needed changes to policy or practice." This will be filled out after the policies and practices questionnaires have been completed and reviewed by the subcommittee.***

Step 5. Conduct the Review

Once you have agreed on a survey instrument and an approach, you are ready to conduct the survey throughout your school

system. It is important to ensure that the instrument is introduced in a manner that will stress its importance, build understanding of the need for the information requested and how it will be used, and encourage honest responses.

> *Worksheet 4–4, Parts I and II, contains suggested questions for the two primary areas of concern to school systems: those policies and procedures related to FAPE and those pertinent to general nondiscrimination practices that affect a wide range of audiences. This Self-Evaluation Review Form is only one tool that may be used by public school systems to evaluate their policies and practices for compliance with Title II. Since the characteristics of programs, services, activities, and practices of public school systems vary, school systems are encouraged to modify this review form to meet their specific needs.*

Step 6. Assess Findings and Document the Changes Needed

Once survey results are received, you will want to review them to determine where existing policies and practices must be modified, or new ones implemented, to ensure that individuals with disabilities fully participate in the programs, activities, and services of the public school system.

> *Worksheets 4–2 and 4–3 contain a column where "needed changes to policy or practice" may be identified. While the worksheets do not provide a space for listing problem areas encountered, you may find it useful to do so as each program area is reviewed. You will then have a written record for your discussion of required changes.*

Step 7. Obtain Comments

You will want to document problem areas, and the changes you intend to make to address them, in a brief but coherent report. This document should be circulated to appropriate persons who have the knowledge and expertise to determine whether the remedies you have decided to propose will address the problems effectively. Remember, you must allow individuals with disabilities and other interested persons to participate in the self-evaluation process by submitting comments.

Once comments are assessed and final decisions made, changes should be made expeditiously. Deadlines for such changes have passed, and complete compliance is mandatory immediately.

Worksheet 4-1 POLICIES AND PRACTICES SUBCOMMITTEE

SCHOOL DISTRICT: _____

NAME (ADA coordinator): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Identify members of the subcommittee responsible for conducting the review of policies and practices and record basic data about the subcommittee.

Policies and practices subcommittee role or mission in ensuring ADA compliance:

Meeting frequency/location:

Procedures for convening policies and practices subcommittee:

Chair:

Policies and Practices Subcommittee Membership

Name	Title	Area Represented/Skills

Worksheet 4-2 SUMMARY OF REQUIRED CHANGES IN THE PROVISION OF FAPE

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Define the scope of the survey by completing all columns except the fourth. When all policies and practices questionnaires (i.e., Worksheet 4-4) have been completed and reviewed by the subcommittee, complete the fourth column. You will probably wish to use one full page for each program area.

Program, Service, Activity, or Practice	Authority or Governing Policy	Conditions Required for Participation by People with Disabilities	Needed Changes to Policy or Practice (Provide Time Frames)	Responsible Unit/Official

Worksheet 4-3 SUMMARY OF REQUIRED CHANGES IN PROGRAMS, ACTIVITIES AND SERVICES

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Define the scope of the survey by completing all columns except the fourth. When all policies and practices questionnaires (i.e., Worksheet 4-4) have been completed and reviewed by the subcommittee, complete the fourth column. You will probably wish to use one full page for each program area.

Program, Service, Activity, or Practice	Authority or Governing Policy	Conditions Required for Participation by People with Disabilities	Needed Changes to Policy or Practice (Provide Time Frames)	Responsible Unit/Official

Worksheet **4-4** **SELF-EVALUATION REVIEW FORM, PART I**

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

REVIEW OF POLICIES AND PRACTICES GOVERNING THE PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION

A. **Free Education**. Provision of a free education means the provision of regular or special education and/or related aids and services without cost to the child with a disability or his/her parents or guardians, except for fees equally imposed on nondisabled children or their parents or guardians. The cost of a program may include tuition, related services, and other costs associated with the educational placement of a child with a disability. Also, if a school district places a student in a public or private program, other than one operated by the school system, the school system remains responsible for coverage of financial obligations associated with the placement.

1. Identify any programs and activities operated by the school district for which children with disabilities are charged a fee that is not imposed on nondisabled children. If any, please explain the reason for the additional fee for each program or activity identified.

2. List any fees imposed on a child with a disability placed in a public or private educational program by the school district to provide the child with a free appropriate public education. If any, please explain the reason for the additional fee for each program or activity identified.

3. If there are programs and activities operated by the school district for which children with disabilities are charged a fee that is not imposed on nondisabled children, or if a school district imposes any fees on a child with a disability placed in a program other than the one it operates in order to provide free appropriate public education to that child, document areas where new or modified policies and practices are needed and recommend solutions to identified problems. (For example, new policies and practices would be needed if a school district places a student in a program it does not operate in order to ensure the provision of a free appropriate public education, but does not ensure that adequate transportation to and from the program is provided at no greater cost to the parents or guardian than would be incurred if the student was placed in the district's program.)

B. **Educational Setting.** Promoting integration is a fundamental principle of Title II. Public school systems must provide each child with a disability an equal opportunity to participate in programs, activities, and services in the regular education setting, unless it can be demonstrated that the child requires a separate or different program in order to receive an appropriate education.

1. Describe the policies and procedures (written or unwritten) used by the school system to ensure that a child with a disability in the regular education setting is provided an individualized educational program to meet the particular needs of the child.

2. List the criteria used by the school system to determine when a child with a disability cannot participate in the regular education setting, even with the use of supplementary aids and services.

3. List "separate or different" programs, activities and services designated only for children with disabilities. If applicable, describe how they contribute to affording children with disabilities an equal opportunity to benefit.

4. Describe policies and procedures used by the public school system to ensure that regular and special education teachers (and other specialists) coordinate in providing educational services to children with disabilities who participate in regular or special education.

5. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

C. **Nonacademic and Extracurricular Activities.** Public school systems must ensure that children with disabilities are afforded an equal opportunity to participate in nonacademic and extracurricular activities and services to the maximum extent appropriate to the needs of the child. Nonacademic and extracurricular services and activities may include physical education classes, counseling services, special interest groups or clubs, extended-day care, meals, recess periods, recreational athletics, and transportation.

1. List the nonacademic and extracurricular programs and activities offered by the school district in which a child with a disability may not participate. Please explain.

2. Identify any policy that would prohibit a child with a disability from participating in a nonacademic or extracurricular program, activity, or service offered by the school system. Please explain.

3. Describe the policies and procedures (written or unwritten) used by the school system to ensure that children in special education are afforded an equal opportunity to participate in nonacademic and extracurricular activities with nondisabled children.

4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

D. **Evaluation and Placement of Children with Disabilities.** Public school systems are required to establish standards and procedures for the evaluation and placement of children with disabilities who, because of their disability, need or are believed to need special education and/or related aids and services. Children with disabilities must be afforded the maximum possible integration with nondisabled children.

1. **Pre-placement Evaluation.** School systems must conduct an evaluation of any child who, because of a disability, needs or is believed to need special education and/or related aids or services. This evaluation must take place before taking any action with respect to the initial placement of the child and before any subsequent significant change in placement.

   a. Describe the pre-referral policies and procedures used by school personnel prior to evaluation of a child with suspected disabilities, if any.

   b. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

2. **Evaluation Standards and Procedures.** School districts must establish standards and procedures for initial and continuing evaluation and placement decisions. These procedures must ensure that tests and other evaluation materials: (1) have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) include materials tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient; and (3) are selected and administered so as to best ensure that, when a test is given to a student with impaired sensory, manual or speaking skills, the test results accurately reflect the student's aptitude or achievement level (or whatever other factor the test purports to measure) rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test purports to measure).

   Periodic re-evaluation of a child who receives special education and/or related aids and services is required. Also, re-evaluation is required before any significant change in placement for a child with a disability.

   School districts must take steps to ensure that students with limited English proficiency are not misassigned to special education classes because of their inability to speak, read, write, and understand English. Such steps may include: assessing the student in his or her own language; ensuring that accurate information regarding the student's language skills is taken into account in evaluating assessment results; and comparing results obtained when a part of the assessment is repeated in the student's first language.

   a. List and describe the tests and other evaluation materials used for the initial and continuing evaluation of children with suspected disabilities.

   b. Describe procedures used by the public school system to ensure that selected tests and other evaluation materials only measure what they purport to measure when administered to a child with particular disabilities.

   c. Describe the standards and procedures that are used to ensure that tests are administered by trained personnel in conformance with the instructions provided by their publisher.

   d. Describe policies and procedures used by the school system to re-evaluate a child with a disability who receives special education or related aids and services.

   e. Describe procedures used by the public school system to ensure that tests and other evaluation instruments are appropriately administered to a child with a disability whose primary home language is not English.

   f. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

3. **Educational Placement of Children with Disabilities.** Placement decisions must be made by a group of persons, including persons knowledgeable about the child and the meaning of the evaluation data and placement options. The placement team must consider a variety of documented information for each student. The information must come from several sources, including aptitude and achievement tests, teacher recommendations, reports on physical condition, social or cultural background, and adaptive behavior. The school district must also establish procedures to ensure that information obtained from all sources is

documented and carefully considered. When the school district has identified the educational and related services needed by a child with disabilities, it must develop a plan and must provide services as described in the plan. The placement team must ensure that the placement provides for the education of the student with disabilities with students who do not have disabilities to the maximum extent appropriate to the needs of the student with disabilities.

a. Provide the title and responsibilities of key personnel on a standard placement team.

b. List the basic sources of information drawn upon to make educational placement decisions about a child with a disability.

c. Describe the procedures to ensure that all relevant information is incorporated into placement recommendations.

d. Describe the method used by the placement team to ensure that the educational placement recommended for a child with a disability is documented in sufficient detail to ensure that the individual educational needs of the child are met.

e. If a school district is unable to provide a child with a disability with an appropriate education and the district places the child in, or refers the child to, a program it does not operate, describe the procedures used by the district to ensure that the education offered by the public or private entity is in compliance with Title II and Section 504.

f. Describe criteria and procedures used by the public school system to ensure that a student with a disability is being educated with students who do not have disabilities to the maximum extent appropriate to his or her needs.

g. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

E. **Procedural Safeguards.** A public school system is required to establish and implement a system of procedural safeguards with respect to the identification, evaluation, and placement of qualified children with disabilities in the school district.

1. Describe the information included in notices to parents or guardians regarding identification, evaluation, and placement, respectively.

2. Describe procedural safeguards established to ensure that the parents or guardians of a child with a disability are provided an opportunity to review all materials that are used as the basis for decisions about the child with respect to identification, evaluation, and placement.

3. Describe procedural safeguards established to ensure that the parents or guardians of a child with a disability are informed of: (1) their right to due process; (2) their opportunity to participate in a due process hearing; (3) their right to be accompanied and advised by representative counsel of their choosing; and (4) their right to appeal a hearing decision.

4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

Worksheet **4-4** **SELF-EVALUATION REVIEW FORM, PART 2**

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

GENERAL REVIEW OF POLICIES AND PRACTICES THAT GOVERN PROGRAMS, ACTIVITIES, AND SERVICES OF PUBLIC SCHOOL SYSTEMS

A. **Denial of Opportunity to Participate or Benefit.** People with disabilities who are otherwise qualified to participate in the programs, activities, and services of a public school system cannot be barred from participation. Public school systems are prohibited from excluding not only people with disabilities, but also friends or family members associated with them.

1. Identify any circumstances in which a person with a disability or anyone associated with the person would, because of the person's disability, be restricted from or denied participation in a program, activity, service, or benefit offered by the public school system.

2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

B. **Provision of Unequal Opportunity to Benefit Prohibited.** Title II requires that people with disabilities receive the same opportunity as nondisabled people to participate in and benefit from the programs, activities, and services of a public school system.

1. Identify any circumstances in which there is greater opportunity for a nondisabled person than for a person with a disability to participate in a program, activity, service, or benefit that is generally available to both.

2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

C. **Provision of Benefit or Service that is Not Equally Effective Prohibited.** In providing general services and benefits, a school district must ensure that services provided to qualified individuals with disabilities are effective enough to afford them equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as nondisabled individuals.

1. Describe procedures used to ensure that the public school system provides its general services and benefits to qualified individuals with disabilities in a manner that is effective enough to afford them an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as nondisabled individuals.

2. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

D. **Provision of Separate or Different Benefits Prohibited**. A public school system may not provide separate or different programs, services, or benefits for individuals with disabilities, unless

necessary to provide them with equally effective participation as afforded to nondisabled persons. Even when separate or different programs are permitted, the public school system must consider the following requirements:

- First, each qualified person with a disability must be given the same opportunity as nondisabled persons to participate in the regular offerings of the public school system.
- Second, each qualified person with a disability must be given the opportunity to participate in and benefit from the offerings of the public school system in the most integrated setting appropriate to the needs of that individual.
- Third, the provision of separate or different services is permitted only when necessary to provide an equal opportunity to qualified persons with disabilities.

1. Identify any separate program, activity, service, or benefit offered by the public school system that contributes to affording people with disabilities an equal opportunity.

2. Describe any circumstances in which a person with a disability would be prohibited from participating in regular (non-separate) activities because of the provision of separate activities.

3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

E. **Surcharges Prohibited.** A public school system is required to make its programs, activities, services, and benefits available to qualified individuals with disabilities to the extent that they are available to other participants in the program. Surcharges may not be imposed on individuals with disabilities to cover the cost of measures necessary to provide nondiscriminatory treatment.

1. List each program, activity, service, or benefit for which the public school system charges a fee.

2. Identify any circumstances in which a person with a disability would be asked to pay a fee or meet any other requirements not imposed on other program participants.

3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

F. **Reasonable Modifications in Policies, Practices, and Procedures.** Public school systems are required to review their policies, practices, and procedures to determine the effect of each one on participation by individuals with disabilities. If public school systems identify any policy, practice, or procedure that has a discriminatory effect on individuals with disabilities, the school system is required to modify it unless the modification would result in a fundamental alteration of the nature of the program, service, or activity.

1. Describe the procedures used to inform the public that the program is prepared to make reasonable modifications to accommodate any qualified individual with a disability and to respond to requests for modifications.

2. Identify procedures used to inform appropriate school personnel of the need to make reasonable and effective modifications to provide otherwise qualified individuals with disabili-

ties equal opportunity to participate in the programs, services, and activities operated by the public school system.

3. Identify the procedure used by the public school system to determine whether a policy or practice modification would fundamentally alter the nature of the program. If any, please describe.

4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

G. **Eligibility Criteria.** A public school system may not use eligibility criteria for participation in its programs or receipt of its benefits and services that screen out or deny individuals with disabilities full and equal participation in programs, services or benefits, unless the eligibility criteria are necessary for and relevant to the program, activity, service, or benefit being offered.

1. List the programs, activities, services, and benefits offered by the public school system and the *essential* eligibility requirements of each.

2. Identify any criteria that may limit or screen out individuals with disabilities from participation in the programs, activities, services, and benefits offered by the public school system. Please explain.

3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

H. **Criteria or Methods of Administration**. School systems may not maintain policies or actual practices that exclude qualified individuals with disabilities on the basis of their disabilities.

1. List each program, activity, service, and benefit offered by the school system and identify relevant criteria or methods of administration.

2. Determine whether adherence to any criterion or method of administration excludes or segregates individuals with disabilities on the basis of their disability from full participation in each program, service, activity, or benefit offered by the public school system. If any, please explain.

3. Determine whether adherence to any criterion or method of administration perpetuates discrimination against any individual with a disability by another public entity that is under common administrative control or is in the same state as the public school system. If any, please explain.

4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

I. **Selecting Sites and Locations**. Public school systems may not select sites or locations for facilities that have the effect of excluding or denying individuals with disabilities the benefits of or participation in the programs, activities, and services of the public school system, or otherwise subjecting qualified individuals with disabilities to discrimination. (This does not apply to construction of additional buildings at an existing site.)

1. Determine whether the terrain or any other feature of a site or location under consideration would have any adverse effect on participation by a qualified individual with a disability.

2. Describe criteria utilized in the selection of sites or locations for facilities that are designed to ensure that qualified individuals with disabilities are not subjected to discrimination. Are these criteria utilized every time sites or locations are being selected for facilities? Please explain.

3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

J. **Significant Assistance.** Public school systems that provide significant assistance to another agency, organization, or individual retain responsibility for ensuring that the other entity or individual does not discriminate on the basis of disability. In determining whether assistance to another entity or individual is significant, a public school system should consider the substantiality of the relationship (e.g., financial support) and whether the activities of the other entity or individual relate so closely to the school system's programs that these activities could fairly be considered activities of the public school system.

1. List any organization, program, or individual that receives significant assistance from the public school system.

2. Describe the policies, procedures, and practices used by the public school system to ensure that agencies, organizations, and individuals that receive significant assistance do not discriminate against individuals with disabilities.

3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

K. **Procurement Contracts.** Public school systems may not discriminate on the basis of disability in selecting procurement contractors.

1. List any organizations, programs, or individuals with which the public school system contracts services.

2. Identify the policies and actual operating practices that govern contract relations to determine whether provisions are included to ensure that programs, activities, services, and benefits provided by contractors on behalf of the public school system are free of discrimination. If none, please explain.

3. List any circumstances in which a consideration related to disability would influence the choice of a procurement contractor. Please explain.

4. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

L. **Licenses or Certification.** A public school system may not deny a license or certification to any person with a disability who meets the essential eligibility requirements for the license or certification. Eligibility requirements cannot include criteria that directly or indirectly screen out people with disabilities unless the criteria are necessary to the performance of the activity which is the object of the license or certificate.

1. List any licenses or certifications issued by the public school system.

2. List any eligibility criteria for licenses and certificates that may tend to screen out people with disabilities. For each potentially exclusionary criterion, identify why the criterion is necessary to the performance of the activity to which the license or certificate applies.

3. Document areas where new or modified policies and practices are needed and recommend solutions to identified problems, as needed.

CHAPTER FIVE

REQUIREMENTS FOR EMPLOYMENT POLICIES AND PRACTICES

This chapter reviews ADA requirements related to the employment policies and practices of public school systems. As explained previously, Title II, Subpart C, of the ADA addresses employment discrimination, but references Title I and Section 504 for specific requirements concerning employment. However, the Rehabilitation Act Amendments of 1992 amended Section 504 to incorporate Title I employment standards. As a result, all school districts are subject to Title I standards. The chapter, therefore, focuses primarily on employment standards under the regulation implementing Title I of the ADA. Since Section 504 has been in existence for over twenty years and most school districts have had experience complying with the old employment requirements of Section 504, significant differences between the requirements of Title I and the old employment standards of Section 504 are also highlighted throughout the chapter.

The chapter begins with an overview of requirements related to employment under Titles I and II of the ADA as well as under Section 504. The chapter presents a summary of the applicability of these legal standards, their basic requirements, and the nature of their interrelationships. Next, two definitions critical to the ADA's approach to nondiscriminatory employment are reviewed: the concept of a "qualified person with a disability" in the context of employment and the delineation of "essential functions" of a job. A discussion of the key concept of "reasonable accommodation" follows. Numerous examples of reasonable accommodations are provided. The concept of "undue hardship" — the counterbalance to the requirement to provide reasonable accommodations — is also presented.

The chapter then reviews specific elements of the employer–employee relationship, beginning with requirements for qualification standards and selection criteria. The chapter presents nondiscrimination requirements applicable to the hiring process, reviewing requirements for job advertisements and notices, preemployment inquiries, and testing. Next, it addresses post-offer and employee medical examinations and inquiries. The chapter reviews nondiscrimination requirements that prohibit actions that limit, segregate, or classify applicants and employees because of a disability. It also discusses how these requirements apply to the provision of health insurance benefits plans, opportunities for advancement, performance standards, and training opportunities.

The chapter reviews Title I requirements that prohibit discrimination against employees or potential employees that results from contractual relationships of the employer. It also addresses Title I requirements that prohibit discrimination on the basis of relationship or association with persons with disabilities or organizations intended to benefit persons with disabilities, as well as Title I requirements that prohibit retaliation and coercion that result from the lawful exercise of rights under the ADA. Finally, defenses to charges of employment discrimination on the basis of disability are discussed.

At the end of the chapter, a practical guide to conducting the self-evaluation of employment policies and practices is presented. The worksheets provided may be used to conduct an initial self-evaluation or to conduct periodic reviews to identify areas in which modifications may be needed to remain in compliance.

AN OVERVIEW OF APPLICABLE LEGAL STANDARDS

Title II prohibits all public entities from discriminating against qualified individuals with disabilities in their employment policies and practices [28 C.F.R. § 35.140(a)]. For public school systems directly subject to Title I (virtually all), Title II adopts standards contained in Title I [28 C.F.R. § 35.140(b)(1)]. Title I, which is primarily enforced by the U.S. Equal Employment Opportunity Commission, has prohibited job discrimination for all state and local government employers with at least 25 employees since July 26, 1992 [29 C.F.R. § 1630.2(e)(1)]. Since July 26, 1994, Title I has prohibited job discrimination by state and local government employers with 15 or more employees [29 C.F.R. § 1630.2(e)(1)].

For public school systems that are not directly subject to Title I, Title II adopts the standards of Section 504 [28 C.F.R. § 35.140(b)(2)]. Under Section 504, public school systems that receive federal financial assistance, regardless of the number of employees, are prohibited from discriminating in employment in their programs and activities. Because Section 504 has been in existence for over twenty years, most public school systems have had experience in complying with Section 504. As discussed in Chapter One and the introduction to this chapter, it is important to note, however, that all school districts are actually subject to Title I standards because the Rehabilitation Act Amendments of 1992 provide that complaints alleging employment discrimination under Section 504 are now to be judged by the standards of Title I.

In general, requirements under Title I of the ADA are more detailed and comprehensive than the old employment requirements under Section 504. There are also a few significant differ-

ences between the requirements of Title I and the old employment requirements of Section 504, which are addressed in this chapter. It is essential that school districts become thoroughly familiar with the Title I requirements because all school districts are subject to Title I standards.

OVERVIEW OF LEGAL REQUIREMENTS

The basic mandate of Title I is that an employer cannot discriminate against an otherwise qualified person with a disability in any aspect of the employment relationship. Activities that are part of the employment relationship include recruitment, the application process, testing, interviewing, hiring, assignments, evaluation, discipline, medical examinations, compensation, promotion, on-the-job training, layoff/recall, termination, leave, benefits such as health insurance, and any other terms, conditions, and privileges of employment.

Your school system's self-evaluation must include a thorough examination of its employment policies and practices to ensure that it is in compliance with the ADA. Under the ADA, the following actions are prohibited:

28 C.F.R. § 35.140 Employment discrimination prohibited. *(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.*

1. Refusing to make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the public entity can prove that the accommodation would pose an undue hardship.

2. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of the public entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

3. Using qualification standards, employment tests, or other selection criteria that screen out, or tend to screen out, an individual with a disability, unless these criteria are job-related and consistent with business necessity.

4. Making pre-employment inquiries related to an individual's disability or medical history or refusing to hire an individual on the basis of the person's disability or medical history (unless the rejection is job-related and consistent with business necessity, and job performance cannot be accomplished with reasonable accommodation).

5. Failing to select and administer tests concerning employment so as to ensure that, when a test is administered to an applicant or employee with impaired sensory, manual, or speaking skills, the test results accurately reflect the

individual's aptitude or achievement level (or whatever other factor the test purports to measure) rather than reflecting the person's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

6. Making medical inquiries or conducting medical examinations of applicants or employees, or taking actions against individuals with disabilities based on medical or related information, in a manner prohibited by the ADA. (See discussion on pages 114–118.)

7. Limiting, segregating, or classifying a job applicant or employee because of his or her disability in a way that adversely affects the individual's employment opportunities.

8. Participating in a contractual or other arrangement or relationship that subjects either a qualified applicant or an employee with a disability to discrimination.

9. Utilizing standards, criteria, or methods of administration (a) that have the effect of discrimination on the basis of disability; or (b) that perpetuate the discrimination of others who are subject to common administrative control. (See discussion on page 76.)

10. Denying employment opportunities to or otherwise discriminating against a qualified individual, whether or not that individual has a disability, because he or she has a relationship or association with a person with a disability.

11. Discriminating against an individual because he or she has opposed an employment practice of the employer; has filed a complaint; or has testified, assisted, or participated in an investigation, proceeding, or hearing to enforce provisions of the ADA.

Except for the requirement mentioned in item 9, which is addressed on page 76, these basic requirements will be discussed in more detail following a review of two key definitions essential to understanding and complying with the ADA's employment-related regulations.

BASIC DEFINITIONS

Who is a "Qualified Individual with a Disability?"

As mentioned in Chapter Two, employers may not discriminate against "qualified individuals with disabilities," either as job applicants or employees. For the purposes of employment, a

qualified individual with a disability is a person with a disability who satisfies the requisite skill, experience, and education and other job-related requirements for the job and can perform the essential functions of the job, with or without reasonable accommodation [29 C.F.R. § 1630.2(m)].

29 C.F.R. § 1630.2 Definitions. *(m) **Qualified individual with a disability** means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.*

Clearly, all individuals with disabilities are not necessarily "qualified individuals with disabilities."

EXAMPLE:
Are these qualified individuals with disabilities?

A school district's budget office is hiring for a certified public accountant position. Jill, who has a psychiatric disability, applies for the position. She has some bookkeeping experience, but she is not a certified public accountant. The district can reject Jill because she is not qualified for the position. On the other hand, Lisa, who has a visual disability, applies for the position. She is a certified public accountant and can perform all essential job functions. Lisa is qualified for the position.

Even though, in the example given, Lisa is clearly qualified for the certified public accountant position, the district does not have to hire her. There is no obligation to prefer a qualified applicant with a disability over other applicants. The employer is free to select the most qualified applicant available. However, if selection criteria screen out, or tend to screen out, a qualified individual with a disability, the criteria must be job-related and consistent with business necessity. In addition, an employer cannot refuse to hire an applicant with a disability because he or she needs an accommodation to perform an essential function of the job (in Lisa's case, perhaps a magnification device) or because he or she cannot perform a marginal function of the job (in Lisa's case, perhaps occasional document filing). If it were found that the district eliminated Lisa as an applicant on the basis of her disability or hired someone clearly less qualified to avoid having to accommodate her disability, the district would not be in compliance with Title I.

What are the "Essential Functions" of a Job?

A person is a qualified individual with a disability only if he or she can perform the *essential* functions of a job (with or without reasonable accommodation). If such a person cannot perform functions marginal or incidental to job performance, the individual is still qualified. Clearly, it is critical that employers thoughtfully analyze and document job requirements in a way that clarifies the distinction between essential and non-essential functions of a job.

Prior to the Rehabilitation Act Amendments of 1992, the Section 504 regulation did not define the term "essential

29 C.F.R. § 1630.2 Definitions. *(n) Essential functions. (1) In general.* *The term "essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.*

functions." However, Title I incorporates the understanding of "essential functions" that is presented in the Appendix to the Section 504 regulation [Appendix A to 34 C.F.R. Part 104, at 374 (1994)]. The term "essential functions" refers to the *fundamental* elements of a job.

Factors to be weighed in determining whether a job function is essential include:

1. whether the reason the position exists is to perform the function;

2. whether a limited number of employees are available to perform the function, or whether the performance of the job function can be distributed among them; and/or

3. whether the function is a highly specialized one that requires special expertise or ability the person hired must have to be able to perform it [29 C.F.R. § 1630.2(n)(2)].

Evidence that may be considered in determining whether a particular job function is essential includes, but is not limited to, the following:

- written job descriptions prepared before advertising or interviewing applicants;
- the terms of a collective bargaining agreement;
- the amount of time spent on the job performing the function;
- the work experience of past employees in the job;
- the work experience of current employees in the same or similar jobs;
- the consequences of not requiring that the function be performed; and/or
- the employer's judgment as to which functions are essential [29 C.F.R. § 1630.2(n)(3)].

EXAMPLES:
Are these individuals able to perform essential job functions?

1. *A public school is hiring for the position of secretary to the principal. Dorothy, who has multiple sclerosis and uses a wheelchair, meets all of the qualification standards in terms of experience, education, and related skills. 70% of the job involves typing, while 25% of the job involves using the telephone, and 5% of the job involves*

filing. There is a file clerk who handles the bulk of the filing duties. The office has a system of upright files and Dorothy is unable to reach the two top drawers from her wheelchair; however, she can perform all other job duties. Since she has the requisite skills and education and can perform the essential functions of the job, and the filing task is a marginal function, Dorothy is qualified for the position.

2. *Umberto, a public school teacher, has taught successfully in the school for several years. Last semester he was in a serious automobile accident and suffered an injury to the head. While gradual recovery is projected, at present, Umberto has cognitive difficulties, including difficulty in information retention and concentration, and psychosocial impairment manifested in inappropriate outbursts of anger.*

   After receiving complaints from students, school officials sit in on several of his courses. A conclusion is reached that, at the present time, Umberto is unable to communicate clearly to his class and that angry episodes are alienating his students. After consultation with Umberto's doctor and a review of medical evidence, as well as consultation with representatives of a national disabilities organization familiar with common head injury problems, school officials conclude that no reasonable accommodation will enable Umberto to perform his teaching duties during this phase of his recovery. He is offered a choice of either a temporary unpaid leave of absence or being placed in a lower-paid administrative position.

   Umberto claims that he has been discriminated against. However, Umberto is not able to perform essential functions of his job as a teacher and no reasonable accommodation will enable him to succeed as a teacher until he recovers further. Therefore, the school district's actions are not discriminatory.

Job descriptions used to identify essential job functions should be written to focus on the desired *outcome or results* of a job, not the manner in which it is usually performed. Often, reasonable accommodation will enable an individual with a disability to achieve the necessary results in a different way from the more typical approach to the task. What matters is that the desired outcome is achieved.

If an individual with a disability who is otherwise qualified cannot perform one or more essential job functions because of his or her disability, the prospective employer must consider whether there are accommodations that would enable the person

to perform these functions. The following section discusses the employer's obligation to provide reasonable accommodation and the limits to that obligation. The section also provides examples of reasonable accommodation.

THE OBLIGATION TO PROVIDE REASONABLE ACCOMMODATION

Reasonable Accommodation

Employers are required to make reasonable accommodation for qualified applicants and employees with disabilities who request such accommodation. Reasonable accommodation means modifications or adjustments to a job application process, the work environment, the way in which a job is customarily performed, or employment policies that enable a qualified individual with a disability to be considered for the position, perform the essential functions of the job, or enjoy benefits and privileges of employment equal to those available to a similarly-situated employee without a disability [29 C.F.R. § 1630.2(o)(1)].

29 C.F.R. § 1630.2 Definitions. ***(o)(1) Reasonable accommodation.*** *The term "reasonable accommodation" means:*

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Examples of Reasonable Accommodation

Examples of reasonable accommodation include adjusting work schedules, restructuring the job, reassigning the employee, acquisition or modification of equipment and devices, providing qualified readers or interpreters, or modifying the work site [29 C.F.R. § 1630.2(o)(2)].

1) Adjusting work schedules. An employer should consider modification of a regular work schedule as a reasonable accommodation unless this would cause an undue hardship. Modified work schedules may include flexibility in work hours or the work week, or part-time work, where this will not be an undue hardship.

EXAMPLES:
Are the following adjustments to these individuals' work schedules reasonable accommodations?

1. *Jim, an administrator in a school district's central office, has a disability, one of the effects of which is sleeplessness. As a result of Jim's request for a reasonable accommodation, the district permits Jim to start work at 10 A.M., rather than at 9 A.M., the typical starting time for administrators. Jim then leaves work at 6 P.M., one hour later than the typical time administrators leave for the day. The district is fulfilling its obligation to provide reasonable accommodation.*

2. *Sean, a vice principal with a mental disability, requires*

two hours off, twice weekly, for sessions with a psychiatrist. He requests a reasonable accommodation..The school district permits Sean to take longer lunch breaks and to make up the time by working later on those days. The district is fulfilling its obligation to provide reasonable accommodation.

Although employers may be required to make adjustments in leave policy as a reasonable accommodation in some instances, employers are not required to provide additional paid leave for employees with disabilities as an accommodation. However, employers should consider allowing use of accrued leave, advanced leave, or leave without pay, where this will not cause an undue hardship [*A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, U.S. Equal Employment Opportunity Commission, January 1992, page III–23].

2) Restructuring the job. Job restructuring as a reasonable accommodation may involve reallocating or redistributing the marginal functions of a job. Although an employer is not required to reallocate essential functions of a job as a reasonable accommodation, it may be a reasonable accommodation to modify the essential functions of a job by changing when or how they are done.

EXAMPLE:
Is job restructuring a reasonable accommodation for this individual?

Rob, who had his left arm amputated as a result of an accident, has returned to work in the facilities maintenance department using a prosthesis. He is able to perform all of the essential job functions of his former position. However, Rob is not able to perform the marginal function of operating one piece of equipment that cannot be modified and requires a two-handed, fine motor grasping motion. Since Rob always works as part of a crew, the duties among the crew are reallocated so that other workers perform that task. The school district is fulfilling its obligation to provide reasonable accommodation.

3) Reassigning the employee to a vacant position. Although "reassignment" was not specifically listed as a possible reasonable accommodation in the Section 504 regulation prior to the Rehabilitation Act Amendments of 1992, under the Title I regulation, reassignment may be an appropriate accommodation if an individual is unable to perform the essential functions of his or her current position because of a disability. If there is no other accommodation that will enable the person to perform these functions, or if the employer can prove that other accommodations would pose an undue hardship, reassignment to a vacant

position should be considered if the individual is qualified for the position.

EXAMPLE:
Is employee reassignment a reasonable accommodation for this individual?

Sarah worked as a bus driver for the City Department of Education. After a serious car accident in which she experienced a traumatic brain injury, Sarah is unable to drive and is therefore no longer able to perform the duties required of the position. There is no reasonable accommodation that would enable Sarah to perform the essential function of driving a bus safely. However, Sarah is qualified for a position that has just become vacant in which she would coordinate transportation for athletic and other special events. The City Department of Education offers Sarah this job reassignment as a reasonable accommodation, which fulfills the agency's duty to provide reasonable accommodation.

4) Acquiring or Modifying Equipment and Devices. Purchase of equipment or devices or modifications to existing equipment may be effective accommodations for people with many types of disabilities. There are many devices that make it possible for people to overcome existing barriers to performing functions of a job. These devices range from very simple solutions, such as an elastic band that can enable a person with cerebral palsy to hold a pencil and write, to "high-tech" electronic equipment that can be operated with eye or head movements by people who cannot use their hands. There are also many ways to modify standard equipment so as to enable people with functional limitations to perform jobs effectively and safely.

Creative analysis of job requirements often results in effective low-cost accommodations. The following are a few examples of effective uses of low-cost assistive devices as reasonable accommodations:

- Wrist supports for use while typing (available for under $30) and adjustment of the height of the desk chair may enable a clerk/typist with carpal tunnel syndrome (an inflammatory disease that affects the wrists, typically as a result of repetitive motion) to do his or her job with minimal stress on his or her wrist joints.

- A detachable extension arm for a rake may enable a groundskeeper with limited use of one arm to control the rake with the fully-functional arm.

- A relatively lightweight mop and a smaller broom may enable an employee with congenital heart problems to do his or her job with minimal strain.

- A trackball may be used instead of a "mouse" to enable an individual with poor hand–eye coordination to control the movement of the cursor on a computer screen.

EXAMPLE:
Is the provision of equipment a reasonable accommodation for this individual?

Martin has been employed as a part-time maintenance worker by a school system for many years. One of his primary responsibilities during the winter months is removing snow from sidewalks. Martin develops a heart ailment that substantially limits his ability to lift heavy objects and prevents him from shoveling snow. He informs his employer about his health condition and requests reasonable accommodation. He is fired without discussion. The school system has discriminated against Martin because school officials did not discuss possible reasonable accommodation, such as the provision of a snow blower, that may have enabled him to continue fulfilling his responsibilities as a part-time maintenance worker.

It is important to note that many types of equipment and devices that are effective accommodations for employees with visual, hearing or speech disabilities — such as large print displays on computer monitors, screen readers, TDDs, and telephone amplifiers — also constitute auxiliary aids and services that are designed to provide effective communication. Auxiliary aids and services that are used to provide effective communication are discussed in greater detail in Chapter Seven.

5) Providing Qualified Readers and Interpreters. It may be a reasonable accommodation to provide a qualified reader for a qualified individual with a visual disability or a qualified interpreter for a qualified individual with a hearing disability, if such an accommodation does not impose an undue hardship. Identifying the needs of the individual in relation to specific job tasks will determine whether or when a reader or interpreter is needed. Few jobs require a full-time employee for reading or interpreting. A reader or an interpreter may be a part-time employee or a full-time employee who performs other duties. Readers and interpreters must read and interpret well enough, respectively, to enable the employee with disabilities to perform his or her job effectively.

EXAMPLE:
Is an interpreter a reasonable accommodation for this individual?

Tina is an administrator with a local school district. She has a hearing impairment, and although she is a good lip-reader in one-to-one communication settings, she communicates using a sign language interpreter for group settings and to handle

telephone work. The school system contracts with an interpreter to work with Tina for twenty hours per week. Tina arranges her schedule so that her meetings and telephone work are scheduled for the times the interpreter is present. This arrangement fulfills the school district's duty to provide reasonable accommodation.

Qualified readers and interpreters are also examples of auxiliary aids and services that are used to provide effective communication. As mentioned above, auxiliary aids and services that are designed to provide effective communication are discussed comprehensively in Chapter Seven.

6) Modifying the work site. Employers are obligated to provide access for individual job applicants with disabilities to enable them to participate in the job application process. When an employee with a disability is hired, an employer may have to modify the work site to enable him or her to perform essential job functions. In addition, employees with disabilities must be able to readily access all facilities used by employees, whether essential to job functions or not — for example, the employee lounge or cafeteria.

EXAMPLE:
Is work site modification a reasonable accommodation for this individual?

Peter, who uses a wheelchair, is hired as an administrator. He is unable to enter the building where he is assigned, which has two steps between the lobby entrance and the elevators. He is also unable to sit comfortably at his desk because it is too low to the floor. The school district constructs a ramp in the lobby to provide an accessible route for Peter. His desk is raised on concrete blocks to accommodate the height of his wheelchair. These worksite modifications fulfill the school district's duty to provide reasonable accommodation.

It is important to understand that an employer is obligated to provide only job-related accommodations. The requirement to provide reasonable accommodation does not include providing personal aids or services to assist an individual in daily activities on or off the job, such as wheelchairs, glasses, prostheses, or assistance in toileting or feeding.

It is strongly suggested that school districts establish policies and procedures to document information regarding the provision of reasonable accommodation. Information that might be documented includes the date that an employee or prospective employee notified the employer of his or her need for accommodation, the specific accommodation(s) requested by the employee or prospective employee, the specific accommodation(s) that the employer offered and the date(s) of the offer, and whether the

employee or prospective employee accepted or refused the accommodation. Employers are encouraged to inform supervisors of the need to keep this documentation in the event that a grievance is filed or litigation is pursued.

Choosing the Accommodation

The employer is obligated to accommodate only known disabilities of qualified applicants or employees [29 C.F.R. § 1630.9(a)]. The responsibility for providing an accommodation is triggered when an individual with a disability makes a request for an accommodation. Usually, the person making the request will be able to suggest an appropriate accommodation. School districts can facilitate this process by providing appropriate forms and specific procedures for the use of individuals in need of accommodation.

Many employees with disabilities do not need accommodations. For other employees, the need for accommodation may be obvious. If an employee with a known disability is having difficulty performing the job without an accommodation, the employer may ask the employee whether he or she is in need of an accommodation. Under the Title I regulation, a qualified individual with a disability is not required to accept the offer of an accommodation. However, if such an offer is rejected and the person cannot then perform the essential functions of the job, the person will no longer be considered a qualified individual with a disability [29 C.F.R. § 1630.9(d)]. (These Title I requirements regarding the rejection of an offer of a reasonable accommodation were not specifically provided in the Section 504 regulation prior to the Rehabilitation Act Amendments of 1992.)

Once the applicant or employee has requested an accommodation, sufficient information must be gathered to determine the type of accommodation necessary to enable the individual to perform the job. In most instances, the person with a disability is in the best position to identify what is needed; however, you may wish to seek additional information from qualified experts.

An employer need not provide the requested accommodation if an alternative means of accommodation that is less costly, but equally effective, is available. It is mandatory, however, to provide an accommodation that gives a qualified individual with a disability an opportunity to attain the same level of job performance as co-workers with similar skills and abilities. Public school systems should anticipate requests for reasonable accommodation. It will facilitate your response to such requests to have certain commonly requested accommodations readily available or know how to obtain them expeditiously when needed.

The Job Accommodation Network provides free consulting services for employers to help them select accommodations to

enable persons with disabilities to perform critical job functions. By contacting the Job Accommodation Network, you can access experienced persons familiar with a large number of accommodations that may be applicable to the barrier your employee must overcome. By far, the majority of accommodations suggested are relatively inexpensive: in fact, 31% of those suggested by Network consultants to date have been free. (See *Resources*.)

The Counterbalance: Undue Hardship

29 C.F.R. § 1630.9 Not making reasonable accommodation. *(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.*

If an employer can prove that a requested accommodation imposes an "undue hardship" on the employer, it need not be provided [29 C.F.R. § 1630.9(a)]. However, if the originally suggested accommodation is an undue hardship, the employer must consider carefully whether another accommodation exists that would *not* result in an undue hardship.

Undue hardship is defined as significant difficulty or expense incurred by a covered entity in the provision of an accommodation [29 C.F.R. § 1630.2(p)(1)]. Under Title I, factors that should be weighed in determining whether a requested accommodation poses an undue hardship include:

- the nature and net cost of the accommodation, taking into consideration the availability of tax credits and deductions and/or outside funding;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;
- the overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of employees and the number, type, and location of its facilities;
- the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force; the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and
- the impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business [29 C.F.R. § 1630.2(p)(2)].

The factors used to determine what constitutes an "undue hardship" under Title I are more explicit and numerous than those contained in the Section 504 regulation prior to the Rehabilitation Act Amendments of 1992. For example, Section 504 required only

that the resources of the covered entity as a whole be considered in determining whether an accommodation was too costly for a particular school district [34 C.F.R. § 104.12(c)(1)]. Under Title I, the resources that are available to the employee's specific work site must be considered, in addition to consideration of the resources of the covered entity as a whole. The Title I regulation also stresses that net cost (taking into consideration the availability of tax credits, tax deductions, and/or outside funding) is a relevant factor; the Section 504 regulation simply referred to the nature and cost of the accommodation needed [34 C.F.R. § 104.12(c)(3)].

The decision as to whether a requested accommodation is reasonable must be made and reviewed on a case-by-case basis. If providing a particular accommodation would be an undue hardship, the employer must attempt to identify an alternative accommodation that would not impose a hardship, as explained earlier. In addition, in cases in which the accommodation would pose an undue hardship for the employer, the individual with the disability should be given the option of paying for the portion of the cost that constitutes an undue hardship or of providing the accommodation [Appendix to 29 C.F.R. Part 1630, at 414 (1994)]. It must be clearly understood, however, that this option is to be offered as a last resort and only in cases in which providing the requested accommodation would clearly constitute an undue hardship; it is not to be considered a routine cost-saving strategy.

EXAMPLE:
Is this requested accommodation an undue hardship?

A teacher with a disability that affects blood circulation requests that the thermostat in her classroom be raised to a certain level to accommodate her disability. However, the temperature she requires for her own comfort is uncomfortably hot for students. The school does not have to provide this accommodation if it would constitute an undue hardship. However, if there is an alternative accommodation that would not be an undue hardship — such as providing a space heater — the school must provide that accommodation.

If employees are governed by a collective bargaining agreement, the terms of that agreement may have an impact on whether or not a requested accommodation creates an undue hardship [Appendix to 29 C.F.R. Part 1630, at 414 (1994)]. For example, if a person becomes disabled and can no longer perform the essential functions of the job with reasonable accommodation, job reassignment may be a possibility. However, if the collective bargaining agreement reserves certain jobs for employees with a given amount of seniority, and if the individual with the disability does not have the seniority normally required, this is a legitimate factor to consider in determining whether or not it would be an

undue hardship to reassign the employee to that vacancy. The interrelationship between the terms of a collective bargaining agreement and the responsibility of employers to provide reasonable accommodation is a complex issue where litigation is likely to occur. Specific situations will have to be resolved on a case-by-case basis.

It is important to understand, however, that certain provisions of collective bargaining agreements will clearly violate the ADA if they single out persons with disabilities for different treatment [29 C.F.R. § 1630.6(a)]. For example, a collective bargaining agreement that permits a person only one unpaid leave for treatment for alcoholism violates the ADA if unpaid leave for treatment for alcoholism is treated more restrictively than unpaid leave for all other reasons. This "limitation" constitutes disparate treatment based on disability and differs significantly from "neutral" provisions, such as those addressing seniority rights. A provision limiting leave for alcoholism treatment singles out individuals with a disability for different treatment and explicitly prohibits a type of reasonable accommodation. Because of the disparate treatment of employees with a disability, an employer (or union) could *not* defend such a provision by claiming undue hardship.

The EEOC is currently developing guidance that will address, among other things, the relationship between the terms of a collective bargaining agreement and the responsibility of employers to provide reasonable accommodation. To obtain information concerning this guidance, contact the EEOC directly. (See *Resources*.)

QUALIFICATION STANDARDS AND SELECTION CRITERIA

29 C.F.R. § 1630.10 Qualification standards, tests, and other selection criteria. *It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job–related for the position in question and is consistent with business necessity.*

The ADA does not prohibit an employer from establishing physical and mental job-related qualification standards — including education, skills, and work experience — necessary for job performance, health and safety [29 C.F.R. § 1630.10]. Public school districts are entitled to hire the most qualified person able to perform a job.

ADA requirements are designed to ensure that people with disabilities are not excluded from jobs that they *can* perform. However, qualification standards or selection criteria that screen out or tend to screen out an individual with a disability on the basis of disability are not automatically disallowed if they are demonstrably job-related and consistent with business necessity [29 C.F.R. § 1630.10]. "Job-related" means that a selection criterion must be a legitimate measure or qualification for the specific job for which it is being used [*A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*,

U.S. Equal Employment Opportunity Commission, January 1992, page IV–2]. "Business necessity" means that a selection criterion may not exclude an individual with a disability because of the disability unless the criterion relates to the essential functions of the job [*A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, U.S. Equal Employment Opportunity Commission, January 1992, page IV–3].

Even if a standard is job-related and consistent with business necessity, if it screens out an individual with a disability on the basis of disability, the employer must consider whether the individual could meet the standard with reasonable accommodation. For example, it may be job-related and necessary for a school district to require that a secretary produce letters and other documents on a word processor. However, it would be discriminatory to reject a person whose disability prevented manual keyboard operation but who could meet the qualification standard using a computer assistive device. Such devices are generally not costly and would not be expected to impose an undue hardship for any public school district.

It is important to note that employers may continue to select and hire people who can perform all job functions. However, an employer may not refuse to hire an individual with a disability who, while able to perform the essential functions of the job, cannot perform marginal job functions because of the disability, even though other applicants can perform those marginal functions [*A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, U.S. Equal Employment Opportunity Commission, January 1992, page IV–2].

EXAMPLE:
What qualification standards and selection criteria may this school district consider when evaluating applicants for a job opening?

A school district has an opening for an administrative assistant. The essential functions of the job are administrative and organizational. Some occasional typing has been part of the job, but other clerical staff are available who can perform this marginal job function.

There are two job applicants. Jennifer has a disability that makes typing very difficult; John has no disability and can type. The district may not refuse to hire Jennifer because of her inability to type, but must base a job decision on the relative ability of each applicant to perform the essential administrative and organizational job functions, with or without accommodation. However, if Jennifer could not type for a reason not related to her disability (for example, if she had never learned to type), the district would be free to select the applicant who could best perform all of the job functions.

NONDISCRIMINATION IN THE HIRING PROCESS

Job Advertisements and Notices

It is advisable that job announcements, advertisements, and other recruitment notices include information on the essential functions of the job. Specific information about essential functions will attract applicants, including individuals with disabilities, who have appropriate qualifications.

Information about job openings should be accessible to people with various disabilities. For example, job information should be available in a location that is accessible to people with mobility impairments and in formats accessible to individuals with sensory impairments. While an employer is not obligated to provide written information (such as job descriptions) in alternative formats in advance of any request, the information in alternative formats must be made available in a timely manner once it has been requested.

Pre-employment Inquiries

The ADA prohibits pre-offer inquiries regarding the existence of an applicant's disability or the nature and severity of the disability on application forms, in job interviews, and in background or reference checks [29 C.F.R. § 1630.13(a)]. Pre-offer medical inquiries or medical examinations are also prohibited [29 C.F.R. § 1630.13(a)]. These requirements are intended to redress a historically common occurrence: the rejection of people with disabilities before their merits are considered, often based on myths and misinformation about their disability. Employers *may* make pre-employment inquiries into the ability of the applicant to perform job-related functions [29 C.F.R. § 1630.14(a)]. However, blanket questions such as "Do you have a disability?" or "How many times have you been hospitalized in the last five years and for what?" are not permissible. Employers may also not ask such questions as, "Have you ever been treated by a psychiatrist or psychologist?" and "Are you taking any prescribed drugs?" Questions concerning an applicant's workers' compensation claims history are also prohibited at the pre-offer stage.

Employers may ask all applicants to describe or demonstrate how they will perform the functions of the job with or without reasonable accommodation. Employers may also ask an individual with a known disability to describe or demonstrate how functions of the job will be performed, whether or not all applicants in the job category are so asked [29 C.F.R. § 1630.14(a)]. If a demonstration of how the proposed accommodation would work in practice is required, the employer must provide the reasonable accommodation for the demonstration. Agility tests are not considered medical examinations and are permissible at

the pre-offer stage, provided that they are given to all applicants [Appendix to 29 C.F.R. Part 1630, at 412 (1994)].

It is important to note that public school systems have an obligation to make reasonable accommodations to enable an applicant with a disability to apply for a job. For example, individuals with visual or learning disabilities or other mental disabilities may require assistance in filling out application forms. School districts must also provide a reasonable accommodation, if needed, to enable an applicant to have equal opportunity in the interview process. Needed accommodations for interviews may include an accessible location for people with mobility impairments, a sign language interpreter for a person with a hearing impairment, or a reader for a person with a visual impairment. School districts may find it helpful to include a statement in job notices and/or job application forms, that applicants who need accommodation for an interview should request this in advance.

Testing

Employers may use any kind of test to determine job qualifications. However, if a test screens out or tends to screen out an individual with a disability or a class of such individuals on the basis of disability, it must be job-related and consistent with business necessity [29 C.F.R. § 1630.10]. For example, a principal's office seeking to hire a secretary may continue to use a typing test that excludes individuals who type less than sixty words per minute if typing is an essential function of the job and sixty words per minute is the expected level of performance for employees in the job category.

The ADA requires that tests be given to people who have impaired sensory, speaking or manual skills in a format and manner that does not require use of the impaired skill, unless the test is designed to measure that skill [29 C.F.R. § 1630.11]. The purpose of this requirement is to ensure that tests accurately reflect a person's job skills, aptitudes, or whatever else the test is supposed to measure, rather than impaired skills that are not required to perform essential job functions. This requirement applies the reasonable accommodation obligation to testing.

29 C.F.R. § 1630.11 Administration of tests. *It is unlawful for a covered entity to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).*

Some examples of alternative test formats and accommodations include:

- substituting a written test for an oral test (or written instructions for oral instructions) for people with impaired speaking or hearing skills;
- administering a test in large print, in Braille, by a reader, or on a computer for people with visual or other reading disabilities;

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- allowing people with visual or learning disabilities or who have limited use of their hands to record test answers by tape recorder, dictation or computer;
- providing extra time to complete a test for people with impaired writing skills or certain learning disabilities;
- allowing individuals with disabilities who function better or worse at certain times of day because of the effects of medication or changing energy levels to take the test at a time when they can do their best;
- ensuring that a test site is physically accessible to a person with a mobility impairment;
- allowing a person with a disability who cannot perform well if there are distractions to take a test in a separate room, unless the ability to take the test in a group setting is relevant to essential job functions being tested; and
- allowing rest breaks for people with mental and other disabilities who need that relief.

POST-OFFER AND EMPLOYEE MEDICAL EXAMINATIONS AND INQUIRIES

Inquiries Following a Conditional Offer

Once an offer of employment has been extended, it may be conditioned on the results of a medical examination if all individuals in the same job category are examined and if the information obtained is kept confidential [29 C.F.R. § 1630.14(b)]. Medical inquiries at this stage of the employment process are unrestricted. However, there are limitations on how medical information gathered at this stage may be used. If the results of the medical examination are used to screen out applicants with disabilities, the criteria must be job-related and consistent with business necessity [29 C.F.R. § 1630.14(b)(3)].

EXAMPLE:
Is this use of medical information permissible?

Jeff is applying for an administrative assistant position at an elementary school. The essential functions of the job are word processing, filing, and answering the telephone. The school requires all applicants to undergo a post-offer, pre-placement physical. The medical history portion of the examination discloses that Jeff has a psychiatric disability. The school system informs Jeff that it wishes to withdraw its offer.

Since post-offer medical examinations and inquires, made before an individual starts work, need not focus on the ability to perform job functions and do not have to be "job-related" and "consistent with business necessity," the school system may inquire regarding Jeff's disability. However, the school system may not withdraw the job offer unless the reasons for the exclusion are job-related and consistent with business necessity and job functions cannot be accomplished with the provision of reasonable accommodation, or unless Jeff poses a direct threat to health or safety.

It is permissible to make post-offer inquiries about a worker's medical compensation history if all applicants in the same job category are asked the same question [*A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, U.S. Equal Employment Opportunity Commission, January 1992, page V–8]. However, an employer may not base an employment decision on speculation that an applicant may cause increased workers' compensation costs in the future.

Employee Medical Examinations and Inquiries

The Title I regulation contains several provisions regarding employee medical examinations and inquiries that were not contained in the Section 504 regulation prior to the Rehabilitation Act Amendments of 1992. For example, under Title I, once an employee starts work, any health-related inquiries or medical examinations must be job-related and consistent with business necessity [29 C.F.R. § 1630.14(c)]. Medical examinations or inquiries may be conducted when there is a need to determine whether an employee is still able to perform essential job functions. For example, if an employee repeatedly falls asleep on the job, has excessive absenteeism, or exhibits difficulty performing essential job functions, a medical examination may be required to determine fitness for job duty and/or the need for reasonable accommodations.

Under Title I, employers may conduct periodic examinations and other medical screening and monitoring required by federal, state or local laws [Appendix to 29 C.F.R. Part 1630, at 413 (1994)]. Prior to the Rehabilitation Act Amendments of 1992, Section 504 did not contain a similar provision. The Title I regulation provides that an employer may defend an alleged discriminatory action by showing that the action was taken in compliance with another federal law or regulation [29 C.F.R. § 1630.15(e)]. An action taken to comply with state or local law must be consistent with the ADA [Appendix to 29 C.F.R. Part 1630, at 413 (1994)]. For example, if a state or local law required that employees in a particular job be tested periodically for AIDS or the HIV virus, the ADA would prohibit such an examination unless an employer can show that it is job-related and consistent with business necessity or required to avoid a direct threat to

health or safety [*A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, U.S. Equal Employment Opportunity Commission, January 1992, page VI–15].

Under Title I, an employer may conduct voluntary medical examinations and inquiries as part of an employee health program, provided that participation in the program is voluntary and information obtained is kept confidential and is not used to discriminate against an employee [29 C.F.R. § 1630.14(d)]. Prior to the Rehabilitation Act Amendments of 1992, there was no similar provision under Section 504.

Medical Files

Employers are required to maintain medical files separate from employees' personnel files to ensure against unwarranted disclosure of the person's disability [29 C.F.R. §§ 1630.14(b)(1),(c)(1), and (d)(1)]. Although confidentiality must be maintained, an employer may inform supervisory personnel about an individual's medical restrictions or necessary accommodations. First aid or safety personnel may be informed if special treatment or evacuation assistance may be necessary. Disclosure is also permitted to: (1) government officials investigating compliance with the ADA; (2) state workers' compensation or second injury fund offices; and (3) the employer's health or life insurance companies [Appendix to 29 C.F.R. Part 1630, at 412(1994)].

Drug Testing

The ADA does not require or prohibit testing employees for illegal use of drugs [29 C.F.R. § 1630.16(c)(1)]. However, any additional information obtained from drug tests besides whether the individual is currently engaging in the illegal use of drugs, such as the presence of a prescription medication to control a particular disability, must be treated as confidential medical information [29 C.F.R. § 1630.16(c)(3)]. The employer can require drug use tests at any stage of the employment process.

Direct Threat to Health or Safety

As discussed in Chapter Two, under Title I, an employer is not required to hire or continue to employ an individual who poses a direct threat to the health or safety of the individual or others [29 C.F.R. § 1630.15(b)(2)]. The direct threat standard is a strict one. The term is defined as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation" [29 C.F.R. § 1630.2(r)]. Speculative or remote risks are not sufficient to constitute a significant risk under this provision. In determining whether an individual would pose a direct threat, the factors to be considered include:

1. the duration of the risk;

2. the nature and severity of the potential harm;

3. the likelihood that the potential harm will occur; and

4. the imminence of the potential harm [29 C.F.R. § 1630.2(r)].

The employer must rely on the most current medical knowledge and/or objective, factual evidence concerning the individual, not on generalizations or stereotypes, to demonstrate the existence of a direct threat to health or safety. The assessment must consider whether accommodations could be provided that would enable the individual to safely perform the essential functions of the job [29 C.F.R. § 1630.2(r)].

EXAMPLE:
Does this individual pose a "direct threat to health and safety?"

School district officials may believe that there is a risk of employing Keith, an individual with HIV disease, as a teacher. However, it is medically established that this disease can only be transmitted through sexual contact, use of infected needles, or other entry into a person's blood stream. There is therefore little or no likelihood that employing Keith as a teacher would pose a risk of transmitting HIV disease.

Although the term "direct threat" was not used in the pre-1992 Section 504 regulation, the factors used to determine whether an individual poses a "direct threat" in the Title I regulation are effectively identical to those contained in Section 504 case law to determine whether an individual poses a "significant safety risk" [*School Board of Nassau County v. Arline*, 480 U.S. 273, 288 (1987)].

A specific provision of Title I applies the direct threat analysis to food handlers with infectious or communicable diseases. The Secretary of the U.S. Department of Health and Human Services is responsible for generating a list of infectious and communicable diseases that are transmitted by food handling. If a person with a disability has one of these diseases and there is no reasonable accommodation that can eliminate the risk of transmitting the disease, the employer can refuse to hire the applicant or can reassign an incumbent to a position where he or she does not pose a direct threat to health or safety [29 C.F.R. § 1630.16(e)].

LIMITING, SEGREGATING, OR CLASSIFYING JOB APPLICANTS OR EMPLOYEES

29 C.F.R. § 1630.5 Limiting, segregating, and classifying. *It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.*

An employer or other covered entity may not limit, segregate, or classify an individual with a disability in a manner that adversely affects the individual's employment opportunities because of his or her disability [29 C.F.R. § 1630.5]. Under the ADA, an individual with a disability must have equal access to any employment opportunity available to a similarly situated individual who is not disabled. This includes access to opportunities and benefits extended to current employees as well as those offered during the recruitment process.

Insurance and Other Benefit Plans

This requirement — that individuals may not be limited, segregated, or classified because of a disability in a way that adversely affects the individual's employment opportunities — applies to health insurance and other benefit plans provided by the school district to its employees, such as life insurance and pension plans, as well as to other benefits and privileges of employment. If an employer provides insurance or other benefit plans to its employees without disabilities, it must provide equal access to the same coverage to its employees with disabilities [Appendix to 29 C.F.R. Part 1630, at 404 (1994)].

An employer cannot fire or refuse to hire an individual with a disability because the employer's current health insurance plan does not cover the individual's disability or because the individual may increase the employer's future health care costs. Also, an employer cannot fire or refuse to hire an individual (whether or not that individual has a disability) because the individual has a family member or dependent with a disability who is not covered by the employer's current health insurance plan or who may increase the employer's future health care costs.

Certain restrictions are permissible, however, unless proven to be a subterfuge for discrimination. An employer may offer health insurance plans that contain pre-existing condition exclusions, even if this adversely affects individuals with disabilities, unless these exclusions are being used as a subterfuge to evade the purposes of the ADA. An employer may also offer health insurance plans that limit coverage for certain procedures and/or limit particular treatments to a specified number per year, even if these restrictions adversely affect individuals with disabilities, as long as the restrictions are uniformly applied to all insured individuals, regardless of disability. In addition, an employer may offer health insurance plans that limit reimbursements for certain types of drugs or procedures, even if these restrictions adversely affect individuals with disabilities, as long as the restrictions are uniformly applied without regard to disability.

For example, an employer can offer a health insurance plan that does not cover experimental drugs or procedures, as long as this restriction is applied to all insured individuals [Appendix to 29 C.F.R. Part 1630, at 405 (1994)].

It is important to note that, with respect to disability-based exclusions and disability-based differences in coverage, employers have the burden of justifying any disability-based distinctions in coverage [*Interim Enforcement Guidance on the Application of the Americans with Disabilities Act of 1990 to Disability-based Distinctions in Employer-provided Health Insurance*, U.S. Equal Employment Opportunity Commission, June 8, 1993, page 4]. For example, consider a public school district that provides a health plan that does not cover cochlear implantation procedures. Because *only* individuals with hearing impairments would require cochlear implants, this is a disability-based distinction in coverage. The provider has the burden of justifying the particular disability-based distinction. The school district would have to show that the health plan is a bona fide health plan and that the disability-based distinction is not a subterfuge for discrimination (i.e., that the exclusion is necessary in order to ensure the financial solvency of the plan, or that a particular procedure is considered experimental treatment) [*Interim Enforcement Guidance on the Application of the Americans with Disabilities Act of 1990 to Disability–Based Distinctions in Employer-Provided Health Insurance*, U.S. Equal Employment Opportunity Commission, June 8, 1993, pages 10–13].

On June 8, 1993, the EEOC issued interim enforcement guidance on the application of the ADA to disability-based distinctions in employer-provided health insurance. This is an area of the law that is still evolving. To obtain a copy of the June 8, 1993, *Interim Enforcement Guidance* or to receive technical assistance regarding disability-based exclusions or disability-based differences in coverage, contact the EEOC directly. (See *Resources*.)

Other Benefits and Privileges

Nondiscrimination requirements, including the obligation to make reasonable accommodation, apply to all social or recreational activities provided or conducted by an employer, to any transportation provided by an employer for its employees or applicants, and to all other benefits and privileges of employment [29 C.F.R. § 1630.4 and Appendix to 29 C.F.R. Part 1630, at 404 (1994)]. Picnics, parties, award ceremonies, and other social functions held by school districts must be held in accessible locations with interpreters or other accommodations available when needed. Employees with disabilities must be given an equal opportunity to participate in employer-sponsored sports teams, leagues, or recreational activities such as hiking or biking clubs. (However, no activity need be cancelled because an employee with a disability cannot participate, or participate fully,

because of the nature of the disability.) Any special facilities provided to employees — such as lounges, cafeterias, exercise rooms and gymnasiums — must be equally available to employees with disabilities. Transportation provided to employees must also be accessible to employees with mobility impairments.

Opportunities for Advancement

The nondiscrimination requirements that apply to initial selection apply to all aspects of employment, including opportunities for advancement [29 C.F.R. § 1630.4]. For example, an employer may not discriminate with respect to promotion, job classification, evaluation, disciplinary action, opportunities for training, or participation in meetings and conferences. Assuming that an employee is not interested in or qualified for advancement — whether resulting from prejudice or mistaken sympathy — is not permissible. Also, the need to provide reasonable accommodation to enable the person with a disability to perform essential job functions may not appropriately be considered as a criterion for advancement. Employers should ensure that supervisors and managers who make decisions regarding promotion and advancement are aware of ADA nondiscrimination requirements.

Employees with disabilities must not be limited in any way with respect to their promotion and advancement through the organization — except by their own skills and abilities.

EXAMPLE:
Is this teacher's advancement being illegally restricted?

Noah is an experienced teacher who has been with the school system for many years. He uses a wheelchair. He has excellent interpersonal skills and is well respected by the student body. However, when there is an opening for an assistant principal position in the school, Noah is not considered because of the perception that his disability would prevent him from handling disruptive students and administering discipline effectively. Noah is being discriminated against. In considering candidates for a position, school officials must analyze candidates' skills and abilities and must not base their decision on whether to hire or promote an individual on perceptions regarding the individual's disability.

Performance Standards

Employees with disabilities may be held to the same standards of production and performance as other employees without disabilities who are performing similar functions. No "special treatment" is required in performance evaluations. If an employee with a disability is not performing well, an employer is entitled to take the same disciplinary action that would be taken against other similarly situated employees. The employer is even

permitted to make medical and other professional inquiries to determine how the disability may be affecting job performance, provided the inquiries are job-related and consistent with business necessity. However, an employee with a disability who needs an accommodation to perform an essential job function should not be evaluated on his or her ability to perform the function without the accommodation and should not be downgraded because the accommodation is necessary.

EXAMPLE:
Is this employee's poor job rating discriminatory?

Eduardo, a guidance counselor, is subject to frequent depression. While receiving medical treatment, in the past year, he has been unable to perform critical job functions to required standards of quality, even though the district has provided reasonable accommodation. He has missed scheduled meetings with students, failed to return calls to prospective employers and colleges, and neglected paperwork essential to assist students in job placement. The school district is not discriminating against Eduardo on the basis of his disability by giving him a poor job performance rating.

Training Opportunities

Employees with disabilities must be provided equal opportunities to participate in training that will enable them to improve their job performance or to qualify for advancement [29 C.F.R. § 1630.4(g)]. In order to enable employees with disabilities to benefit from training, reasonable accommodation must be made, unless the employer can prove that it would constitute an undue hardship. For example, interpreters and notetakers may need to be provided for employees who have hearing impairments. Training conducted directly by the school district or made available through contractors must be held in locations accessible to persons with mobility disabilities.

CONTRACTUAL OR OTHER RELATIONSHIPS

Employers may not do anything through a contractual relationship that they cannot do directly [29 C.F.R. § 1630.6(a)]. Examples of entities with which an employer might contract include employment referral services, training programs, labor unions, and organizations providing fringe benefits to employees [29 C.F.R. § 1630.6(b)].

29 C.F.R. § 1630.6 Contractual or other arrangements. *(a) In general. It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this part.*

As part of the self-evaluation process and of future reviews conducted to ensure continued compliance with the ADA, public school systems should examine the recruitment and placement practices of any employment agencies they utilize (whether for temporary or permanent job placements) to ensure that the

employment agencies' practices are in compliance with the ADA. Particular attention should be given to the methods employment agencies use to recruit or screen applicants. Public school systems should inform employment agencies they work with of their mutual obligation to comply with the ADA. In addition, any apprenticeship and job-training programs with which school districts are associated must also be free from discrimination in their treatment of participants.

EXAMPLE:
Is the school district responsible for this contractor's discriminatory hiring practices?

A local school district uses an employment agency to recruit prospective employees for a management position. The agency places a newspaper advertisement with a telephone number that all interested persons must call; no address is given and the employer's identity is not cited. The advertisement mentions no TDD number. A qualified applicant with a hearing impairment uses a relay service to reach the employment agency. The interviewer finds using the service time-consuming and frustrating; as a result of her initial impression that the candidate would be a "hassle" to work with, she does not include the individual's resume in a selected group of resumes of qualified applicants for further consideration — even though the applicant has met all stated qualifications.

The school system is responsible for the contractor's discriminatory hiring practices.

Labor unions are covered by the ADA and have the same obligation as the employer to comply with its requirements. A public school district cannot take any action through a labor union contract that would be impermissible for it to take directly. For example, if a union contract contained physical requirements for a particular job that screened out people with disabilities who were qualified to perform the job, and these requirements were not job-related and consistent with business necessity, they could be challenged as discriminatory by a qualified individual with a disability.

The Congressional Committee Reports accompanying the ADA advised employers and unions that in order to avoid conflicts between the bargaining agreement and the employer's duty to comply with the ADA, agreements negotiated after the effective date of the ADA should contain a provision that explicitly permits employers to take all action needed to comply with the ADA [S. Rep. No. 116, 101st Cong., 1st Sess. 32 (1990); H.R. Rep. No. 485, 101st Cong., 2nd Sess., pt.2, at 63 (1990)].

DISCRIMINATION ON THE BASIS OF RELATIONSHIP OR ASSOCIATION

As discussed in Chapter Two, employers sometimes make damaging and unfounded assumptions about how a current or prospective employee's relationship to a person with a disability will affect job performance. To protect individuals from this form of discrimination, the ADA bars employers from discriminating against employees, or potential employees, because of their known relationship or association with a person who has a disability [29 C.F.R. § 1630.8]. There was no similar provision previously under Section 504. This ADA provision makes it illegal to fire or refuse to hire someone because of assumptions about how their relationship with a person who has a disability will affect either their work schedule or their participation in an employer-provided health insurance plan. Such persons also cannot be required to accept different insurance terms than those offered to other individuals.

The requirement prohibiting discrimination on the basis of "relationship or association" refers not only to family and other close personal relationships, but also to other social or business relationships and associations [Appendix to 29 C.F.R. Part 1630, at 406 (1994)]. For example, an employer may not discriminate against an individual who is affiliated with a group or association that is composed of persons with disabilities or intended to benefit them. Thus, volunteer work for certain organizations may be considered an association.

EXAMPLES:
Are these individuals discriminated against on the basis of association?

1. *Ian, an applicant for an elementary school teacher position, volunteers with a local organization that provides assistance to persons with AIDS in their homes. During the interview, he informs school officials of this fact. Ian is equally qualified to the other candidates for the position. The school district relies in part on his volunteer work with the local AIDS organization in selecting one of the other candidates for the position. This constitutes discrimination on the basis of Ian's association.*

2. *Margaret is an assistant principal being considered for promotion to principal. School officials are aware that her spouse has been diagnosed as having Alzheimer's Disease. Margaret is refused the promotion based on the unfounded assumption that caring for her spouse may demand so much of Margaret's attention that she will not be able to be an effective principal. This constitutes discrimination on the basis of Margaret's relationship.*

Employers are not obligated to provide accommodation to employees who have a relationship or association with people with disabilities [Appendix to 29 C.F.R. Part 1630, at 406 (1994)]. For example, under the ADA employers are not required to provide modified work schedules as an accommodation to enable employees to care for spouses or children with disabilities or to carry out volunteer activities related to persons with disabilities.

RETALIATION AND COERCION

As discussed in Chapter Two, it is unlawful to discriminate against an individual because he or she has opposed an employment practice of the employer, has filed a complaint, or has testified, assisted, or participated in an investigation, proceeding, or hearing to enforce provisions of the Act [29 C.F.R. § 1630.12(a)]. It is also unlawful to coerce, intimidate, threaten, harass, or interfere with any individual in the exercise or enjoyment of any right protected by the ADA or because that individual aided or encouraged any other individual to exercise any right protected by the ADA [29 C.F.R. § 1630.12(b)].

DEFENSES

The Title I regulation identifies six defenses to a charge of employment discrimination on the basis of disability [29 C.F.R. § 1630.15]. The list is not, however, intended to be exhaustive.

1. **Disparate treatment.** Disparate treatment means treating an individual differently on the basis of disability. Disparate treatment, for example, has occurred when a public school district has a policy of firing individuals with AIDS regardless of the individuals' qualifications. A defense to a charge of disparate treatment is that the alleged actions were based on legitimate, nondiscriminatory reasons unrelated to the person's disability, such as unsatisfactory performance. The defense of a legitimate nondiscriminatory reason is rebutted if the alleged nondiscriminatory reason is shown to be a pretext for discrimination.

2. **Disparate impact of selection criteria.** If a charge is made that selection criteria, although uniformly applied, have an adverse impact on people with disabilities, the employer must show that these criteria are job-related and consistent with business necessity and that no reasonable accommodation is available. If the employer's criteria are based on avoidance of a "direct threat to health or safety," the employer must show that the concern is real, not based on prejudice, and must meet the stringent requirements under the ADA to establish that such a "direct threat" exists.

3. **Disparate impact of policies and procedures (besides selection criteria).** If employer policies and procedures, other than selection criteria, are shown to have an adverse impact on people with disabilities, even when uniformly applied, the employer must show that the policies and procedures are job-related and consistent with business necessity, and that implementation of the policy or procedure cannot be accomplished with reasonable accommodation.

4. **Undue hardship.** As discussed earlier in the chapter, if the charge is a failure to provide reasonable accommodation, the public school district must show that undue hardship would result from providing reasonable accommodation or that reasonable accommodation was in fact offered and refused.

5. **Conflict with other federal laws.** Where other federal laws require or prohibit an action in apparent conflict with the ADA requirements, the employer's obligation to comply with the conflicting standard is a defense. The employer's defense of a conflicting federal requirement or regulation may be rebutted by showing that it is a pretext for discrimination, by showing that the federal standard did not in fact require the discriminatory action, or by showing a non-exclusionary means to comply with the standard that would not conflict with the ADA.

6. **An action that is specifically permitted by sections 1630.14 or 1630.16 of the Title I regulation.** It may be a defense to a charge of discrimination that an action is specifically permitted by sections 1630.14 or 1630.16 of the Title I regulation. These sections cover permissible inquiries and medical examinations; religious preferences; the regulation of alcohol and drugs; the regulation of smoking; drug testing; infectious and communicable diseases in food handling jobs; and certain insurance and benefit plan practices.

IMPLEMENTATION

Conducting the Review of Employment Policies and Practices

This section provides suggestions for the following activities:

- **Prepare to conduct the review**
- **Identify essential job functions**
- **Review policies and procedures for reasonable accommodations, new hires, and current employees**

IMPLEMENTATION

The ADA requires school districts to ensure that qualified persons with disabilities are given equal opportunity to compete for available jobs, to maintain their jobs, and to advance through the organization as far as their abilities will take them. Qualified persons with disabilities must also have equal access to all benefits and privileges afforded other employees. To ensure that your school district is in compliance with the ADA, it is recommended that you conduct a thorough review of school-system-wide policies and practices in the area of employment.

The approach to reviewing policies and practices suggested here begins with a preparation phase in which a staff coordinator is selected, an appropriate subcommittee is put in place and trained, and the review is organized, using appropriate organizational units.

Next, essential job functions are carefully defined on a system-wide basis. Key persons familiar with specific organizational units review job descriptions in their unit to ensure that these descriptions define the desired *outcome or results* of a job without inappropriately specifying the *manner* in which jobs are usually performed.

Finally, the school system reviews all of its employment-related policies and procedures. Areas to be examined include the provision of reasonable accommodations (to ensure their availability to both prospective hires and incumbents and to inform supervisors and interviewers that such accommodations must be provided when requested); all steps of the hiring process; and all policies related to job incumbents, including their access to benefits and privileges.

The following section will review each of these three major areas and the substeps essential to address each one fully. Worksheets designed to assist in this process are introduced at the point in the process where they would be used.

Prepare to Conduct the Review

This phase includes the following steps:

- Identify, recruit, and train the employment subcommittee.
- Organize and schedule the self-evaluation process.
- Train or inform other key personnel.

1. Identify, recruit and train the employment subcommittee. The starting point for self-evaluation of employment policies and practices is to designate an appropriate staff person to coordinate the effort. Frequently, but not always, this is the same person

named as the ADA coordinator. Position titles for persons who have assumed this responsibility in other school districts include director of personnel, human resources director, legal counsel, or others in an overall supervisory capacity for personnel affairs.

Next, list the organizational units of your school district that will participate in the self-evaluation. The units you will work with depend on the size of your school district. You will want to break down the process into units of the size that will best facilitate reliable communication between staff in the unit and the employment subcommittee. Also, units should have similar employment-related procedures.

For each of the organizational units you have identified, identify key employment-related decision-makers. Either choose an appropriate representative to the employment subcommittee or request the decision-maker to designate someone appropriate. Individuals involved in the self-evaluation should have significant expertise to contribute to the review process. The self-evaluation process will proceed more efficiently if representatives are generally familiar with employment-related policies and procedures.

All subcommittee members should be fully informed of the ADA requirements in the area of employment. If at all possible, all subcommittee members should attend employment-related ADA training. At a minimum, they should receive a detailed briefing from the ADA coordinator or another equally informed person. Each individual should also review the ADA statute, the regulations implementing Title I and Title II, this self-evaluation guide, the U.S. Equal Employment Opportunity Commission's Title I technical assistance manual, the U.S. Department of Justice's Title II technical assistance manual, and any other information the ADA coordinator determines is essential.

> ***Worksheet 5–1a may be used to compile a basic list of units, key employment-related decision-makers, and designated subcommittee representatives.***

2. Organize and schedule the self-evaluation process. Convene the subcommittee to determine how to organize the self-evaluation process. Identify the steps you will follow and the forms you will use. You may wish to use the forms provided in this book as they are, adapt them to suit the needs of your school district, or utilize forms obtained from another source (such as those noted in the *Resources* section). Together, the subcommittee should determine how to address any obstacles that could impede its mission.

In order to efficiently organize the self-evaluation process, it will be helpful to collect information regarding how employment-related decisions are made in each organizational unit. The

designated representative to the employment subcommittee may be able to supply this information. It is important to note that key decision-makers regarding employment will be contacted during the self-evaluation and school districts are encouraged to train these decision-makers on the requirements of the ADA.

At this stage you should also develop a plan to ensure appropriate participation by individuals with disabilities. Participation can occur in a variety of ways. For example, an initial meeting or series of open meetings to identify employment-related issues can help in planning the review process. Individuals with disabilities, and, in particular, employees with disabilities, can often identify key issues that may not be readily apparent to employees of the school district who do not have disabilities.

As the self-evaluation proceeds, individuals with disabilities can serve as members of review teams. Their perspectives on the impact and relative importance of barriers to equal employment opportunity may be helpful. They may be able to propose modifications to policies and procedures that would not occur to other individuals. They should also be involved in reviewing modifications to policies and procedures proposed by the subcommittee or by organizational units.

It is suggested that school districts develop and publicize an initial schedule for the entire employment-related self-evaluation process. Include all steps of the self-evaluation and assign target completion dates for each step.

> ***Worksheet 5–1b may be used to record information on key employment-related decision-makers within each unit. Note that information provided should cover all categories of employees, including seasonal workers, employees covered by collective bargaining units, and employees hired through outside agencies. Where distinctions exist for any of these categories of employees, record them. Use Worksheet 5–1c to document the participation of individuals with disabilities in the self-evaluation.***

3. Train or inform other key personnel. In addition to individuals who are on the employment subcommittee and key employment-related decision-makers, each organizational unit contains other individuals who play a significant role with respect to employment-related decision-making, planning, and administration. These individuals should also receive ADA training, or at least receive educational materials on the ADA. Care should be taken either to train or to inform these persons of ADA requirements in a way that will capture their attention. It is important that education on the ADA be provided as early as possible in the self-evaluation process.

Identify Essential Job Functions

Because identifying "essential job functions" of job categories is critical to determining compliance with many ADA employment requirements, one of the first steps that school districts should undertake in the employment self-evaluation is to reexamine the essential job functions associated with each job category. Although job descriptions are not required by the regulations, it is an excellent idea for school districts to develop or update job descriptions that identify essential job functions.

Worksheet 5–2 provides a vehicle to identify job categories, determine whether essential job functions have been defined in a job description, and determine whether the job category is included in a collective bargaining agreement. If a job description that identifies essential job functions does not exist, Part B of Worksheet 5–2 suggests a process for developing job descriptions that identify essential job functions.

Review Policies and Procedures

1. **Ensure that reasonable accommodation is available and offered when appropriate.**

   Since one of the ADA's most important provisions in the area of employment is the requirement that employers make reasonable accommodation for qualified applicants and employees with disabilities upon their request, public school districts should review their policies and procedures for handling requests for reasonable accommodation from qualified applicants or employees with disabilities. A poorly handled response to a request for reasonable accommodation from a qualified person with a disability could result in a lawsuit.

   Although reasonable accommodation must clearly be determined on an individualized basis, school districts can anticipate certain types of accommodation requests and take steps to meet those requests. For example, an applicant who has a hearing impairment may request that a sign language interpreter be present for a job interview. School districts may want to have a listing of providers of interpreters in their local area. Developing or updating policies and procedures related to reasonable accommodation, including designation of responsible staff who will facilitate responses to requests, can ensure consistency, efficiency, and cost-effectiveness in your school district's response. Your school district should also make sure that it provides adequate funding for reasonable accommodation in its budget.

Worksheet 5–3, Part A, may be used to determine whether commonly requested reasonable accommodations are currently available. Part B may be used to collect information on resources that may be used to respond to accommodation requests. Part C may be used to determine how responses to accommodation requests are currently documented, including those believed to constitute undue hardship. Note that a sample Record of Accommodation request is attached to Part C.

2. **Review policies and procedures for employee recruitment.**

School districts must take steps to comply with the ADA requirements at every phase of the recruitment process.

Worksheet 5–4 divides the recruitment process into key steps and identifies tasks school districts must undertake in order to be in compliance. For each stage of the recruitment process, the worksheet raises key questions that should be answered by individuals with the authority to address such issues.

- **Advertising.** It is important to ensure that the content of job advertisements, whether internal postings, newspaper advertisements, or solicitations through outside recruiters, is nondiscriminatory and accurately portrays the essential functions of the job. Procedures should be in place to ensure that job announcements are reviewed for ADA compliance.

  Worksheet 5–4 can assist you in identifying the ways in which job vacancies are advertised, in reviewing the content of job advertisements, and in developing procedures for content review for future advertising.

- **The application form.** The content of application forms must be reviewed to ensure that questions are not presented regarding the existence of an applicant's disability or the nature and severity of the disability, or that questions are not presented that constitute medical inquiries. School districts must provide reasonable accommodation to enable applicants with disabilities to complete application forms. Also, the site where applicants receive or complete applications must be accessible to and usable by persons with disabilities.

  Worksheet 5–4 can assist you in reviewing application forms to ensure that they do not request inappropriate information, in developing procedures to handle reasonable accommodation requests related to the application form and in reviewing the physical accessibility of sites where applicants receive or complete application forms.

- **Conducting the job interview.** Like application forms, job interviews must not include questions that seek to determine whether an applicant has a disability or to ascertain the nature and severity of the disability. Medical inquiries are also prohibited. In addition, reasonable accommodation must be provided to enable applicants with disabilities to have equal opportunity in the interview process. Interview sites must be accessible to and usable by persons with disabilities.

  As noted above, it is highly recommended that all staff who are involved in the interview process undergo ADA and disability awareness training to better prepare them for interviews of candidates with disabilities. Your school district may want to contact your regional Disability and Business Technical Assistance Center for information about upcoming training or the availability of resources you can utilize for internal training. (See *Resources*.)

  Worksheet 5–4 can assist you in reviewing interview questions to ensure that they are nondiscriminatory, in developing procedures to handle reasonable accommodation requests for job interviews, and in reviewing the accessibility of sites where interviews take place.

- **Job tests.** If a job test screens out, or tends to screen out, individuals with disabilities, the test must be job-related and consistent with business necessity.

  Worksheet 5–4 assists your school district in reviewing job tests to determine whether they relate to actual essential job functions performed. Worksheet 5–4 also assists your school district in reviewing procedures for handling requests for reasonable accommodation in taking job tests.

- **Medical inquiries and medical examinations.** It is not permissible to require an applicant to take a medical examination or respond to medical inquiries prior to making an offer of employment. However, once an offer of employment has been extended, it may be conditioned on the results of a medical examination if all individuals in the same job category are examined and if the information obtained is kept confidential.

  Worksheet 5–4 can assist you in reviewing your school district's procedures for medical inquiries and medical examinations of employment applicants.

- **Health insurance and other benefits.** Employment applicants should not be required to complete health insurance forms, life insurance forms, and other benefits forms that

disclose disability-related information prior to their being provided with an offer of employment.

Worksheet 5–4 can assist your school district in reviewing its procedures for the timing of the distribution of benefits forms to ensure that disability-related information is not provided prior to the post-offer stage.

- **The personnel policies manual.**

  If your school district has a personnel policies manual, Worksheet 5–4 may assist your school district in evaluating policies through a review of manual contents (assuming that it is up-to-date and accurately reflects policies as practiced).

  Your content review should include such topic areas as the statement of nondiscrimination or equal opportunity, benefits, rules of conduct/discipline, attendance/leave/sick leave, medical exam requirements, provision of reasonable accommodation, promotion opportunities, training, evaluation, workers' compensation and work-related injury, dress code, confidentiality, termination, and use of drugs/alcohol. These areas could contain provisions that are not permissible. As appropriate, policies should be revised in order to comply with the ADA and staff and managers should be made aware of the revised policies.

  It is important to note that the manual itself should be made available upon request in alternative formats (such as Braille, tape, and large print) for use by employees or prospective employees with disabilities.

3. **Review policies and procedures that affect current employees.**

   Worksheet 5–5 assists school districts in reviewing existing policies and practices that affect current (incumbent) employees.

   For example:

- Employers need to review their policies and procedures to ensure that qualified employees with disabilities receive reasonable accommodation upon request.

- Policies related to medical exams for incumbent employees should be reviewed to ensure that such exams are job-related and consistent with business necessity.

- Employee files need to be reviewed to ensure that any confidential disability-related materials generated on or

after July 26, 1992, are segregated from other employment material. Employers are encouraged but not required to segregate medical information obtained prior to July 26, 1992.

- If employers provide health insurance or other benefit plans to employees, employers should review these plans to ensure that employees with disabilities are accorded equal access to such plans.

- Policies regarding promotion, compensation, termination, absences, dress codes, and other aspects of the employment relationship that affect current employees should be reviewed to ensure that they do not discriminate on the basis of disability.

- Evaluation forms used to measure job performance should be reviewed to ensure that they do not discriminate on the basis of disability.

On- and off-site training or education programs must also be included in the self-evaluation. Equal access to training information that will enhance job skills must be provided. Training materials must be available in alternative formats so that all employees can benefit from them.

In addition, social, recreational, and service activities offered for employees by the public school district must be included in the self-evaluation. All activities of the school district, including transportation services, day care services, and social and recreational activities that are employer-sponsored must be nondiscriminatory. For example, even an event held at a teacher's home may be required to be accessible to employees with disabilities if its purpose is job-related (i.e., a reception for new teachers' aides that are being hired at a school).

Worksheet 5-1a IDENTIFYING ORGANIZATIONAL UNIT DECISION-MAKERS AND REPRESENTATIVES TO THE SELF-EVALUATION SUBCOMMITTEE

SCHOOL DISTRICT: _____

NAME (ADA coordinator): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Use this worksheet to identify employees in each unit who should be involved in the employment self-evaluation. In the first column, write the name of the unit; in the second, write the name of the employment-related decision-maker(s) (e.g., individuals responsible for hiring, promotions, and dismissals); and in the third, write the name of the designated representative from that unit to serve on the subcommittee that will oversee your school district's review of employment policies and procedures.

Name of Unit	Key Decision-Maker(s)	Representative for Employment Sub-committee

Worksheet 5-1b DOCUMENTING EMPLOYMENT-RELATED DECISION-MAKING FOR EACH UNIT

SCHOOL DISTRICT: _____ WORKSHEET COMPLETED BY: _____

ORGANIZATIONAL UNIT: _____ TELEPHONE: _____

NUMBER OF FULL-TIME EMPLOYEES: _____ NUMBER OF PART-TIME EMPLOYEES: _____

NOTES: _____

Please supply the title of the person(s) responsible for each of the following employment-related functions and the name of the person(s) currently performing the function. It may be helpful to provide notes on how that function is performed in the unit.

A. New Hires

1. **Advertising positions**

   Title of person(s) responsible _____

   Name of current person(s) responsible _____

   Notes about the process _____

2. **Application package**

   Title of person(s) responsible _____

   Name of current person(s) responsible _____

   Notes about the process _____

3. **Selection of job applicants**

   Category of applicant _____

   Title of person(s) responsible _____

   Name of current person(s) responsible _____

   Notes about the process _____

   Category of applicant _____

   Title of person(s) responsible _____

   Name of current person(s) responsible _____

   Notes about the process _____

4. **Medical inquiries and medical exams**

   Title of person(s) responsible: _____

   Name of current person(s) responsible: _____

   Notes about the process: _____

5. **Job tests**

   Title of person(s) responsible: _____

   Name of current person(s) responsible: _____

   Notes about the process: _____

6. **Other key hiring roles (describe):** _____

Note: Please attach a flowchart and/or organization chart that shows how the hiring process is organized in this unit.

B. Job Incumbents

1. **Health insurance and other benefits**

   Title of person(s) responsible: _____

   Name of current person(s) responsible: _____

   Notes about the process: _____

2. **Personnel policies**

   Title of person(s) responsible: _____

   Name of current person(s) responsible: _____

   Notes about the process: _____

3. **Employee evaluations**

   Title of person(s) responsible: _____

   Name of current person(s) responsible: _____

   Notes about the process: _____

4. **Organization of employee activities (meetings, centrally organized social events, etc.)**

   Title of person(s) responsible: _____

   Name of current person(s) responsible: _____

   Notes about the process: _____

Worksheet 5-1c DOCUMENTING THE PARTICIPATION OF PEOPLE WITH DISABILITIES

SCHOOL DISTRICT: _____ **WORKSHEET COMPLETED BY:** _____

ORGANIZATIONAL UNIT: _____ **TELEPHONE:** _____

NUMBER OF FULL-TIME EMPLOYEES: _____ **NUMBER OF PART-TIME EMPLOYEES:** _____

NOTES: _____

Provide the names, contact data, and roles of persons with disabilities who have participated in the self-evaluation of employment policies and procedures.

Name: _____

Address: _____

Date(s): _____

Role in self-evaluation: _____

Name: _____

Address: _____

Date(s): _____

Role in self-evaluation: _____

Name: _____

Address: _____

Date(s): _____

Role in self-evaluation: _____

Name: _____

Address: _____

Date(s): _____

Role in self-evaluation: _____

Worksheet 5-2 IDENTIFYING ESSENTIAL JOB FUNCTIONS

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

A. Job Categories

Identify all job categories that exist within this unit. For each job category, determine the following:

- *Does a current job description exist?*
- *Does the description identify essential job functions?*
- *Is there a collective bargaining agreement that governs this job category?*

Job Category	Current Job Description Exists? (Yes or No)	Description Identifies Essential Job Functions? (Yes or No)	Collective Bargaining Agreement for Job Category? (Yes or No)

B. Job Descriptions

If there is no existing job description and you wish to develop one, consider the following process:

1. Obtain descriptions of job functions from past or current employees in the job category. Then, ask employees to:

   a. distinguish between essential and marginal functions, and

   b. identify the percentage of time spent performing each function.

2. Obtain descriptions from supervisors of each job category. Then, ask supervisors to:

   a. distinguish between essential and marginal functions;

   b. identify the percentage of time spent performing each function; and

   c. assess the consequences of each function if not performed. One way to do this is by rating each function from 1 (serious consequences for non-performance) to 5 (negligible consequences for non-performance).

3. Develop a proposed job description identifying essential functions.

4. Distribute job descriptions to all workers in each job category.

Append all documentation on actions taken for determining essential job functions to Worksheet 5–2.

Worksheet 5-3 **REASONABLE ACCOMMODATIONS**

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ ORGANIZATIONAL UNIT: _____

TELEPHONE: _____ DATE: _____

NOTES: _____

A. Forms of Accommodation Checklist

The left-hand column illustrates many common forms of reasonable accommodation. For each stage of the employment process where the reasonable accommodation indicated is already available upon request, please mark with an X. Mark with a D those that should be developed.

	Recruitment/ Hiring	On-the-Job	Training Activities	Social/ Recreational
Large print materials (e.g. 18 pt)				
Braille materials				
Audiocassettes				
Computer diskette				
Readers				
Interpreters				
Notetakers				
TDDs				
Amplified & hearing-aid-compatible telephones				
Assistive listening systems				

	Recruitment/ Hiring	On-the-Job	Training Activities	Social/ Recreational
E-mail				
Captioning/ decoders				
Real-time captioning				
Adaptive computer hardware				
Adaptive computer software				
Flex-time work schedules				
Part-time work schedules				
Work-site modifications				
Job restructuring				
Job reassignment				
Other (list)				

B. Identification of Accommodation Resources

To create a resource bank for accommodation resources, identify how each of the items marked with an X within Part A is provided. Repeat the process for items marked with a D as an aid in development.

1. **Form of accommodation :** _____

   Source address and telephone number:

   Cost:

   Notes:

2. **Form of accommodation:** _____

   Source address and telephone number:

   Cost:

   Notes:

3. **Form of accommodation:** _____

   Source address and telephone number:

   Cost:

   Notes:

C. Analysis of Accommodation Requests

The form on the next page may be used to document requests for accommodation and responses made. Please indicate whether you intend to:

☐ adopt this accommodation request form

☐ use a different form (attach copy)

Record of Accommodation Request

Name and title of person receiving request:

Organizational unit:

Organizational unit head:

1. Type of accommodation requested:

2. Date of request:

3. Estimated cost of providing accommodation (taking into consideration the availability of tax credits and deductions, and/or outside funding):

4. Action taken:

   a. Offered requested accommodation? ☐ Yes ☐ No
   Date accommodation was available for use: _____

   b. Offered comparable accommodation? ☐ Yes ☐ No
   Accommodation offered:
   Alternative accommodation _____accepted _____declined

   Date accommodation was accepted or declined:_____
   If declined, indicate reason given:

   Further actions taken:

5. If the accommodation request may be considered an undue hardship, document the following factors relevant to this decision:

   a. Financial resources of entire school district (number of employees and number, type, and location of its facilities):

   b. Financial resources of facility or facilities involved in the provision of the reasonable accommodation (number of employees and effect of expenditure on available resources and expenses):

   c. Relevant factors pertaining to operation type (composition, structure and functions of work force, geographic separateness, and administrative or fiscal relationships of facility or facilities in question to the covered entity):

   d. Impact of requested accommodation on operation of facility (impact on ability of other employees to perform their duties and the impact on the facility's ability to conduct business):

6. If undue hardship is concluded, what alternative accommodations were offered?

Attach supporting documentation to completed Worksheet 5–3.

Worksheet 5-4 REVIEWING POLICIES AND PROCEDURES FOR NEW HIRES

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ ORGANIZATIONAL UNIT: _____

TELEPHONE: _____ DATE: _____

NOTES: _____

A. Advertising

1. Identify all ways in which job vacancies are advertised.

   Internal posting/notice ☐ Yes ☐ No

   Newspaper ☐ Yes ☐ No

   Outside recruiters or employment agencies ☐ Yes ☐ No

   Other: Describe _____

   _____

2. Describe procedures for ensuring that content of job advertising is non-discriminatory.

   _____

   _____

   _____

   _____

   _____

3. Identify staff person(s) responsible for drafting content of solicitations.
   Name and department:

   _____

   _____

4. As appropriate, review all job advertising.

   ACTION STEPS: Delete all inappropriate language. As necessary, establish guidelines and procedures for content review for all future advertising.

5. Have relevant locations been reviewed for accessibility (e.g., recruiter's offices, bulletin boards)?

   Facility Checklist completed? ☐ Yes ☐ No

   Barriers identified? ☐ Yes ☐ No

   Plan to remove barriers developed? ☐ Yes ☐ No

   Alternative accessible site identified for permanent use or pending barrier removal, if necessary? ☐ Yes ☐ No

   ACTION STEPS: Arrange postings of job announcements at accessible sites.

B. Application Forms

1. Identify all materials given to job applicants at the initial interview ("application packet") stage. Forms must not contain questions regarding the existence of an applicant's disability or the nature and severity of the disability, or contain questions that constitute medical inquiries.

   Application ☐ Yes ☐ No

   Release forms ☐ Yes ☐ No

   Other: Describe _____

   _____

   ACTION STEPS: Review application packets. Remove all inappropriate language or forms.

2. Describe the procedures that have been established for handling reasonable accommodation requests relating to the application form.

   ACTION STEPS: As necessary, use Worksheet 5–3 to develop procedures for handling reasonable accommodation requests relating to the application form. Distribute to appropriate staff. Attach procedures.

3. Identify location(s) where applicants receive or complete application forms: _____

   _____

   _____

4. Consider whether the site(s) where applicants receive or complete application forms is (are) accessible, including the path of travel to the site(s) from public transportation, parking, entrances, etc. If appropriate, complete a Facility Checklist (Worksheet 6–4) regarding the site(s).

   Facility Checklist completed ☐ Yes ☐ No

   Barriers identified ☐ Yes ☐ No

   Plan to remove barriers developed ☐ Yes ☐ No

   ACTION STEPS: Identify alternative accessible site(s) for permanent use or pending barrier removal, if necessary.

C. Interview

1. Identify location(s) where interviews are conducted: _____

2. Consider whether the site(s) is (are) accessible, including the path of travel to the site(s) from public transportation, parking, entrances, etc. If appropriate, complete a Facility Checklist (Worksheet 6–4) for the site(s).

   Facility Checklist completed ☐ Yes ☐ No

   Barriers identified ☐ Yes ☐ No

   Plan to remove barriers developed ☐ Yes ☐ No

   ACTION STEPS: Identify alternative accessible site(s) for permanent use or pending barrier removal, if necessary.

3. Describe policies and procedures that are designed to ensure that interviews do not include questions regarding the existence of an applicant's disability or the nature and severity of the disability or questions that constitute medical inquiries. _____

   ACTION STEPS: As appropriate, develop standardized interview questions. Distribute to appropriate staff.

4. Do interview questions emphasize essential rather than marginal job functions?
   ☐ Yes ☐ No

   ACTION STEPS: Use Worksheet 5–2 to check the correlation of interview questions with essential job functions. Modify questions as appropriate.

5. Have staff who conduct interviews received ADA training? (Such training is not required under the ADA but is strongly recommended.) ☐ Yes ☐ No

   ACTION STEPS: Identify staff not yet familiar with the ADA and work with the ADA coordinator to schedule training programs or briefings.

6. Describe the procedures that have been established for handling reasonable accommodation requests relating to interviews. _____

_____

_____

_____

_____

ACTION STEPS: As necessary, use Worksheet 5–3 to develop procedures for handling reasonable accommodation requests relating to job interviews. Distribute to appropriate staff. Attach procedures.

D. Job Tests

1. Identify job tests or skills tests administered to applicants (e.g., typing tests, spelling tests):

_____

_____

_____

2. Do all job tests relate to actual essential job functions performed? ☐ Yes ☐ No

ACTION STEPS: Use Worksheet 5–2 to correlate job tests with job functions. Modify as appropriate.

3. Describe the procedures that have been established for handling reasonable accommodation requests relating to job tests.

ACTION STEPS: As necessary, use Worksheet 5–3 to develop procedures for handling reasonable accommodation requests relating to job tests. Distribute to appropriate staff. Attach procedures.

E. Medical Inquiries and Medical Examinations

Once an offer of employment has been extended, it may be conditioned on the results of a medical examination if all individuals in the same job category are examined and if the information obtained is kept confidential.

1. Identify positions that require a physical examination. _____

_____

_____

2. Are examinations required of all entering workers in the same job category? ☐ Yes ☐ No

   ACTION STEPS: Examination requirements must be the same for all workers in the same category. Modify and publicize policy and procedures, as needed.

3. If the results of post-offer medical inquiries and examinations screen out, or tend to screen out, applicants with disabilities, are the criteria used job-related and consistent with business necessity? ☐ Yes ☐ No

   ACTION STEPS: Modify medical screening procedures, as necessary. Distribute to appropriate staff.

4. Medical inquiries and medical examinations may only occur at the post-offer and employment stages of the employment relationship. Pre-offer medical inquiries or examinations are prohibited.

   ACTION STEPS: Modify procedures, as necessary. Distribute to appropriate staff.

F. Health Insurance and Other Benefits

1. Identify step during employment process when new hires are asked to complete health, life and/or disability insurance forms.

   ACTION STEPS: Forms that disclose disability-related information should be completed at the post-offer stage. As necessary, modify procedures for the timing of the distribution of benefits forms to ensure that disability-related information is not provided prior to the post-offer stage. Distribute procedures to appropriate staff. Disability-identifying information generated on or after July 26, 1992 should be placed in separate files for such confidential information. Employers are encouraged, but not required, to segregate disability-identifying information obtained prior to July 26, 1992.

G. Personnel Policies Manual

1. Does the school system have a written personnel policies manual? ☐ Yes ☐ No

2. If the school system has a written personnel policies manual, use the following checklist to review the contents of the personnel policies manual for compliance with the ADA:

   Attendance/leave/sick leave

   Benefits

   Confidentiality

   Dress code

   Evaluations

   Medical exam requirements (return to work)

   Provision of reasonable accommodations

   Promotion opportunities

Rules of conduct/discipline

Statement of non-discrimination or equal opportunity

Termination

Training

Use of drugs/alcohol

Workers' compensation and work-related injury

Comment on changes necessary: _____

_____

_____

_____

_____

_____

_____

_____

_____

ACTION STEPS: Make required changes. Distribute to staff.

3. Is the personnel policies manual available in alternative formats? ☐ Yes ☐ No

Audiocassette? ☐ Yes ☐ No

Braille? ☐ Yes ☐ No

Large print? ☐ Yes ☐ No

Computer diskette? ☐ Yes ☐ No

ACTION STEPS: Develop alternative formats, if necessary.

Worksheet 5-5 REVIEWING POLICIES AND PROCEDURES FOR CURRENT EMPLOYEES

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

1. Have job descriptions been reviewed to distinguish between essential functions and marginal functions? ☐ Yes ☐ No

   ACTION STEPS: Review job descriptions. Modify to reflect current functions performed in job. If there are no written job descriptions, consider developing job descriptions in order to ensure uniformity. Provide current job descriptions to current workers.

2. Describe the procedures that have been developed for handling reasonable accommodation requests from job incumbents.

   _____

   _____

   _____

   _____

   _____

   ACTION STEPS: As necessary, use Worksheet 5–3 to develop procedures for handling reasonable accommodation requests from employees. Distribute to appropriate staff. Attach procedures.

3. Under what circumstances are medical examinations required of incumbents? Are such examinations job-related and consistent with business necessity?

   _____

   _____

   _____

   _____

   _____

   ACTION STEPS: Medical examinations of incumbents must be job-related and consistent with business necessity. If your policy differs from this requirement, revise the policy to ensure compliance and publicize the changes made.

Identify medical personnel who perform such exams. To ensure that exams focus only on the ability to perform job-related functions, provide medical personnel with job descriptions for workers being examined.

Review medical forms and revise, if necessary, so that content is job-related and the examination is related to the ability to perform essential functions.

4. Have personnel files been reviewed to ensure that information identifying disability is contained in a separate file? ☐ Yes ☐ No

   ACTION STEPS: Review all worker files. For medical information generated on or after July 26, 1992, segregate health insurance applications or claim forms, fitness for duty reports or other documents that contain disability-identifying information. Create separate files for such confidential information. Employers are encouraged, but not required, to segregate medical information obtained prior to July 26, 1992.

5. Have fringe benefits such as health insurance, including self-insured plans, been reviewed to ensure equal access? ☐ Yes ☐ No

   ACTION STEPS: Review policy language and practices of third party and make changes necessary to ensure ADA compliance.

6. Have all employer-sponsored activities such as social events, recreational activities, day care and transportation been reviewed to ensure program accessibility and equally effective communication for individuals with disabilities as for other individuals? ☐ Yes ☐ No

   ACTION STEPS: Identify employer-sponsored activities. Develop and publicize procedures to ensure program accessibility and procedures to ensure the provision of auxiliary aids and services that are necessary for communication access.

7. Have policies and procedures for in-house transfers or promotions been reviewed to ensure non-discriminatory treatment of employees with disabilities? ☐ Yes ☐ No

   ACTION STEPS: Revise policies and procedures to ensure nondiscriminatory treatment.

8. Review policies regarding compensation, lay-offs, absences, dress codes and other aspects of the employment relationship to ensure that they do not discriminate on the basis of disability.

   ACTION STEPS: Identify problem areas and take steps to correct them.

9. Do all performance evaluation forms and procedures not discriminate on the basis of disability? ☐ Yes ☐ No

   ACTION STEPS: If not, revise evaluation forms and procedures to ensure compliance.

10. Are all training programs offered by the unit fully accessible to employees with disabilities? ☐ Yes ☐ No

    ACTION STEPS: Access to training information may be an area where accommodation is necessary. For example, training videos may require captioning for persons with hearing impairments. Training manuals and related materials should be made available in alternative formats upon request. Identify any training materials used on an ongoing basis that are not available in alternative formats upon request. Develop alternative formats where appropriate.

Develop a policy and procedure to enable employees to request training materials in alternative formats in a timely manner.

Identify a staff liaison with outside entities conducting training. Include among this person's responsibilities both ensuring site accessibility and providing auxiliary aids and services when needed. Identify resources available for interpreters, assistive listening devices, notetakers, or reader services as possible accommodations. If appropriate, complete a Facility Checklist (Worksheet 6–4) for sites at which training is provided.

CHAPTER SIX

PROGRAM ACCESSIBILITY

Public school systems must ensure that programs, services, and activities are accessible to and usable by individuals with disabilities. This chapter provides a review of the Title II requirements regarding program accessibility, as well as a discussion of the similarities and differences between Title II and Section 504 concerning program accessibility.

The chapter begins with a discussion of the concept of "program accessibility." Next, it reviews the general Title II and Section 504 requirements for providing access in existing facilities, presenting examples of the many methods of compliance that may be acceptable under the regulations. It also discusses other significant requirements pertinent to program accessibility in existing facilities: providing access to historic properties and historic preservation programs, providing access in leased space, and developing transition plans for structural modifications found essential to make programs accessible. The "fundamental alteration/undue burden" exception is explained. The chapter then reviews both Title II and Section 504 requirements for new construction and alterations. Finally, it discusses the importance of planning for the maintenance of accessible features.

At the end of the chapter, a practical guide to conducting the program accessibility portion of the self-evaluation is presented. Worksheets are provided that can be used to conduct the self-evaluation and serve as the basis for the development of the transition plan. School systems may use them as they are or adapt them, to help identify areas in which nonstructural or structural modifications may be needed in order to be in compliance.

PROGRAM ACCESSIBILITY

Ensuring program accessibility is an important aspect of enhancing opportunity for persons with physical disabilities. Both Title II of the ADA and Section 504 prohibit public school systems from denying people with disabilities equal opportunity to participate in programs, services, and activities because their facilities are inaccessible to, or unusable by, them [28 C.F.R. § 35.149 and 34 C.F.R. § 104.21]. Both regulations contain two standards to be used in determining whether a covered entity's programs, activities, and services are accessible to individuals with disabilities. One standard deals with "existing" facilities; the other deals with new construction and alterations.

28 C.F.R. § 35.149 Discrimination prohibited. *Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.*

For existing facilities, Title II and Section 504 require covered entities to operate each program so that, when viewed in its entirety, the program is readily accessible to and usable by people with disabilities [28 C.F.R. § 35.150(a) and 34 C.F.R. § 104.22(a)]. This is known as the *program accessibility* standard, and it is one of the most important concepts in compliance planning. A covered entity must make its programs and activities accessible unless it can demonstrate that required modifications would result in a fundamental alteration of the program or in undue financial and administrative burdens. The concept of program accessibility must be understood because it will serve as a guideline in evaluating existing facilities and in formulating structural and nonstructural solutions to any physical access problems found in these facilities.

Both Title II and Section 504 require that a new or altered facility (or the part that is new or altered) be readily accessible to and usable by individuals with disabilities [28 C.F.R. § 35.151 and 34 C.F.R. § 104.23]. The new construction and alterations requirements focus on providing physical access to buildings and facilities rather than on providing access to programs and services. There is no fundamental alteration or undue burden limitation on the new construction and alterations requirements.

There is a common misconception that there are many major differences between the program accessibility requirements of Title II and Section 504. One basic misconception is that under Section 504, only the most elementary access to a program is required (e.g., an accessible entrance and an accessible rest room) and that under Title II, buildings must be fully accessible and barrier-free. In reality, *neither* regulation requires that existing buildings offer a barrier-free environment as long as there is program accessibility. Important similarities exist between Title II and Section 504. For example, both regulations contain similar general requirements for existing facilities and new construction, and alterations. However, some significant differences between Title II and Section 504 do exist in the following areas: (1) relevant time frames for existing facilities; (2) actions resulting in a fundamental alteration of a service, program, or activity or in undue financial or administrative burdens; (3) historic properties; (4) transition plans; and (5) new construction or alterations. These similarities and differences will be discussed in greater detail throughout the chapter.

It is important to note that many people associate the concept of program accessibility primarily with individuals with mobility impairments. This is a serious error. There are less than one million individuals who use wheelchairs in the United States. Four times as many individuals have serious vision impairments; twenty-four times as many individuals have hearing impairments. School district officials must ensure that their programs and activities are accessible to qualified individuals with many

different types of disability. To meet this obligation, school district officials should ensure that, when they conduct the program accessibility portion of the self-evaluation, they consider such issues as providing accessible building signage, providing alarms with visible signals, and providing accessible public telephones. (This requirement is in addition to the school district's obligation to ensure effective communication for individuals with disabilities, which is discussed in Chapter Seven.)

Questions are frequently asked regarding whether school districts must provide program accessibility to parents, guardians, and members of the public with disabilities. As discussed in Chapter Two, under Title II and Section 504, school districts must provide program accessibility to parents, guardians, and members of the public with disabilities for programs, activities, or services that are open to parents or to the public, such as parent–teacher organization meetings, athletic events, plays, and graduation ceremonies.

PROGRAM ACCESS IN EXISTING FACILITIES

Under Title II, an existing facility includes facilities that were already constructed, or for which ground-breaking had begun, prior to the effective date of the Title II regulation (January 26, 1992). Under the Section 504 regulation for federally assisted programs, an existing facility is defined as any facility that was already constructed, or for which ground-breaking had begun, prior to the effective date of the Section 504 regulation (June 3, 1977).

Depending on the date of construction, some facilities may be existing facilities for purposes of Title II but also constitute new construction under the Section 504 regulation. These include buildings constructed on or after June 3, 1977, but before January 26, 1992. In these cases, school systems required to comply with both the Title II and the Section 504 regulations must meet not only the standards for existing facilities under Title II, but also the applicable facility accessibility standards for new construction and alterations under Section 504.

As mentioned earlier in the chapter, both Title II and Section 504 require covered entities to operate each program or activity located in an existing facility in such a way that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities [28 C.F.R. § 35.150(a) and 34 C.F.R. § 104.22(a)]. (The specific language of Title II also refers to services.) Under both regulations, accessibility to existing structures is defined functionally. Neither regulation requires public entities or recipients to make all existing facilities, or every part of the existing facility, accessible to and usable by individuals with disabilities, as long as the program viewed as a whole is accessible.

What is a Program or Activity?

Under Title II and Section 504, the term "program or activity" embraces the programs, activities, and services offered by a covered entity in fulfillment of its mission. It spans all offerings open to any of the audiences served by the school district. The following are examples of programs or activities that, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities: academic programs; food services; library services; health services; counseling; physical education; athletics; recreation; transportation; extracurricular activities, including school clubs and other after-school activities, as well as plays, concerts, or other performances open to the public; parent–teacher organization activities; graduation ceremonies; vocational programs; apprenticeship programs; and employer recruitment opportunities. This list is, of course, not intended to be exhaustive.

28 C.F.R. § 35.150. Existing facilities.

*(a) **General.** A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not —*

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities.

The school district should also consider the entire scope of its overall operation as one program made up of several parts or elements. In conducting the program review, the school district should examine each of the parts or elements that make up the whole. The district should ensure that its entire program, when viewed as a whole, is readily accessible to and usable by individuals with disabilities.

Classroom Buildings, Support Facilities, and Public Events

In order to understand more fully the concept of viewing programs or activities offered in existing facilities "in their entirety," the following discussion presents the application of the program accessibility standard for existing facilities to classroom buildings, programs and activities open to parents or to the public, and support facilities.

With respect to existing facilities, school systems should provide for access to persons with disabilities at schools dispersed throughout their service area so that students with disabilities can attend school at locations comparable in convenience to those available to students without disabilities. School districts do not have to make all of their existing classroom buildings accessible to students with disabilities, provided that all programs offered in inaccessible classroom buildings are also available in other accessible schools in the district, and that the accessible schools are comparable in convenience to those available to students without disabilities. It is important to note that school districts may not make only one facility or part of a facility accessible if the result is to segregate students with disabilities in a single setting. Also, where "magnet" schools, or schools offering different curricula or instruction techniques, are available, the range of choice provided to students with disabili-

ties must be comparable to that offered to students without disabilities.

EXAMPLE:
Is this school system's program, taken as a whole, accessible to persons with disabilities?

There are six elementary school buildings in a school district, of which four are one-story and two are two-story. The two-story buildings were constructed in 1958 and 1960, respectively, and are not physically accessible to persons with mobility impairments. All programs offered in the two-story buildings are available in the four other elementary schools, which are readily accessible to and usable by persons with disabilities. Special planning was done so that persons with disabilities can participate in all programs and activities. The amount of travel time from the homes of persons with disabilities to the accessible schools is comparable to the amount of time traveled by other children without disabilities within the school district of the same age. The school district is in compliance with Section 504 and Title II.

As discussed in Chapter Two and earlier in this chapter, public school systems must ensure that their programs are accessible to parents, guardians, and members of the public with disabilities as well as to students. This requirement includes all programs, activities, or services that are open to parents or to the public, such as parent–teacher organization meetings, plays, and graduation ceremonies. With respect to existing facilities, school districts may satisfy their obligations to make programs accessible to parents who have disabilities by reassigning their child to a school facility that is accessible.

This broader view of looking at programs in their entirety is also the approach Title II and Section 504 take toward such support facilities as rest rooms, water fountains, and parking spaces in existing facilities. Sufficient numbers of these accessible elements should exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of a facility. Usage of the building is an important factor in addressing program accessibility concerns such as the number of rest rooms and drinking fountains required. Buildings in which an individual may spend extended periods of time should meet a higher degree of accessibility than those in which an individual spends relatively short periods of time.

Existing Facilities and Architectural Accessibility Standards

It is important to understand that whether a particular program or activity is accessible is determined not by compliance with an architectural accessibility standard but by considering whether

the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. However, in an assessment of program accessibility in existing facilities, facility accessibility standards such as the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) may be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service. ADAAG and UFAS are the architectural standards that constitute compliance with the Title II requirements for new construction and alterations;[1] UFAS also constitutes compliance with the Section 504 requirements for new construction and alterations.

At the end of this chapter, a Facility Checklist is provided that public school systems can use to assist in identifying architectural barriers, as well as communication barriers that are structural in nature. The Checklist is based on ADAAG.

Methods of Compliance

28 C.F.R. § 35.150 Existing facilities.

*(b) **Methods. (1) General...** A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section... In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.*

Although the program accessibility standard is a rigorous one, both the Title II and Section 504 regulations permit considerable flexibility in how the standard can be met. Both structural and nonstructural methods of achieving program accessibility are acceptable.

Although nonstructural methods of achieving program accessibility are acceptable, nonstructural solutions should not have the effect of segregating people with disabilities or compromising their dignity and independence. Priority consideration must be given to offering programs or activities in the most integrated setting appropriate [28 C.F.R. § 35.150(b)(1) and 34 C.F.R. § 104.22(b)].

If no effective nonstructural alternatives can be provided to achieve program accessibility, public school systems must make the necessary structural changes [28 C.F.R. § 35.150(b)(1) and 34 C.F.R. § 104.22(b)]. These changes must conform to standards for new construction and alterations.

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[1] *On June 20, 1994, the Department of Justice issued a notice of proposed rulemaking in the Federal Register which proposes that the Title II regulation be amended to incorporate, as the ADA Standards for Accessible Design (ADA Standards), the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) as revised in an interim final rule that was published on the same day by the Architectural and Transportation Barriers Compliance Board (ATBCB). The Department of Justice's proposed rule would establish new ADA standards for new construction and alterations covered by Title II. (See page 171 for a more complete discussion of the Department of Justice's notice of proposed rulemaking and the ATBCB's interim final rule.)*

Some acceptable methods of making programs accessible are discussed below.

1. Reassignment of services to an accessible location. The relocation of programs and activities to accessible locations is one method of making programs and activities accessible. For example, classes or activities can be relocated to accessible ground-level floors within a building or reassigned to other buildings that are accessible [28 C.F.R. § 35.150(b)(1) and 34 C.F.R. § 104.22(b)].

EXAMPLE:
Is program relocation an appropriate option for this school?

A two-story elementary school building was constructed in 1952. The primary entrance, the gymnasium, the cafeteria, the administrative offices, and the library were altered and made accessible to and usable by persons with disabilities. Classrooms, rest rooms, and drinking fountains on the ground-level floor of the building were also altered in order to make the ground-level floor of the building accessible to and usable by persons with disabilities. A sufficient number of parking spaces were redesigned in order to be made accessible to and usable by persons with disabilities. Appropriate vertical signs showing the international symbol of accessibility were placed at the accessible parking spaces.

However, no alterations were made on the second floor, and the building has no elevator. Fourth grade classrooms are located on the second floor.

A student with a mobility impairment enrolls as a fourth grader in the school. The school may achieve program accessibility by relocating the programs and activities that the student will be attending to the first floor.

2. Purchase, redesign, or relocation of equipment. Other methods of making programs accessible include the purchase, redesign, or relocation of equipment [28 C.F.R. § 35.150(b)(1) and 34 C.F.R. § 104.22(b)]. "Equipment" includes items that generally make the building functional as well as items that are integral to participation in specific programs, activities, or services, such as work stations, study carrels, and machinery. In many cases, equipment can simply be relocated or raised or lowered to make it usable by an individual with disabilities; in other cases, redesign may be necessary. Redesign of equipment may be a fairly simple and inexpensive process, such as relocating a control panel, replacing grip/twist devices (e.g., doorknobs and drinking fountain faucets) with levers, altering door closure devices, and providing audible or visual signals for individuals with visual or hearing impairments.

It is important to note that the effectiveness of various alternatives should be considered before undertaking the redesign of equipment. For example, a fire alarm that has not been wired to give a visual as well as an audible signal does not automatically violate the Section 504 or Title II regulations. If other methods of communicating danger to individuals with hearing disabilities are provided and are effective in emergency situations, visual signals are not required. In classrooms, cafeterias, and auditoriums, there are generally sufficient numbers of people who would be aware of danger that risk to a person with a hearing disability would be minimal. However, there are situations in which such activity could not be perceived and oral communication would be ineffective. Such situations might include library study areas or other relatively isolated areas. In such cases, redesign of equipment may be the only effective means of communicating danger to individuals with hearing disabilities.

3. Assignment of aides. In some circumstances, aides may be assigned to perform certain tasks that will enable persons with disabilities to participate in programs [28 C.F.R. § 35.150(b)(1) and 34 C.F.R. § 104.22(b)]. For example, aides may be required to ensure that persons with disabilities are able to exit safely from program areas in the event of an emergency. Also, if equipment in a laboratory class is inaccessible to a student with a disability, in order to meet the program accessibility requirements of Title II and Section 504, a human aide may be assigned to assist the student in the laboratory class. In addition, aides may retrieve books for students with mobility impairments if portions of the library are inaccessible. The aides must be available during the operating hours of the library.

4. Structural changes to eliminate barriers. Although structural changes to make existing facilities accessible are not required as a matter of course, they must be undertaken if there is no alternative means to achieve program accessibility [28 C.F.R. § 35.150(b)(1) and 34 C.F.R. § 104.22(b)]. Structural changes include such alterations as installing a ramp, widening a doorway, or lowering a toilet. As mentioned earlier, structural changes must conform to standards for new construction and alterations [28 C.F.R. § 35.150(b)(1) and 34 C.F.R. § 104.22(b)].

EXAMPLE:
Are structural changes required in order to eliminate barriers in this high school?

A school district has one international relations magnet high school. The school building, which was constructed in 1956, is inaccessible to persons with disabilities. Inaccessible elements of the school building include, but are not limited to, the following:

- *The two principal entrances to the first floor of the school are not accessible because of stairs;*
- *The doors to all the classrooms and rest rooms are 28 inches wide;*
- *The entrances to the stalls in the rest rooms are 30 inches wide, and there is no maneuvering room in any of the stalls; and*
- *The second and third floors of the building can be reached only by using stairways.*

Since this building houses the district's only international relations magnet high school program, either the entire program would have to be relocated to an accessible site or structural modifications to this building would be required. Structural changes that are made at the present time would have to be consistent with ADAAG, UFAS, or substantially equivalent standards. (See the discussion of ADAAG and UFAS on pages 170–173.)

The lack of access to the second or third floors may not be a violation of the law if required alterations are made on the first floor of the building, and if programs offered on the second and third floors can be relocated to the first floor when persons with disabilities enroll in these programs. However, if these programs cannot be relocated to the first floor, an elevator or platform lift may have to be installed.

If structural modifications are undertaken, required structural changes would include the following:

- *the installation of a ramp so that one principal entrance to the first floor is accessible;*
- *for a sufficient number of classrooms, including those where specialized programs are located (e.g., a science lab), at least one door leading into or providing an exit for classrooms would have to be widened; and*
- *a sufficient number of rest rooms would have to be altered that are reasonably convenient and appropriate to the use of the facility.*

It is important to keep in mind that structural changes include not only those required in order to provide access to persons with mobility impairments, but also those required to render the program accessible to persons with other disabilities. For example, people with hearing impairments may require assistive listening systems. The full range of disabilities should be kept in mind as program accessibility is considered.

Under Title II, any needed structural changes must be made as soon as possible, but no later than January 26, 1995 [28 C.F.R. § 35.150(c)]. By July 26, 1992, public entities that employ 50 or more persons were required to have developed a transition plan that sets forth the steps necessary to make structural changes [28 C.F.R. § 35.150(d)(1)]. It is important to note that school districts are in violation of Section 504 if they have not already made structural changes that they are required to have made to ensure program accessibility under Section 504. This Guide recommends that school districts prioritize and implement structural modifications in order to ensure Section 504 compliance as quickly as possible.

Some schools, faced with severe accessibility problems, have considered the use of back doors and freight elevators to satisfy the program accessibility requirement. Such measures are acceptable only as a last resort and only if the arrangement provides accessibility comparable to that provided to persons without disabilities. If the back door in question is ordinarily locked and can be accessed only by loud knocking that the maintenance crew may or may not hear, then a plan to provide access by means of the back door is not acceptable. A back door is acceptable only if it is kept unlocked during the same hours the front door remains unlocked; if the passageway to and from the floor is accessible, well-lit, and neat and clean; and if the individual with a mobility impairment does not have to travel excessive distances or through such non-public areas as kitchens and storage rooms to gain access. A freight elevator would be acceptable if it were upgraded so as to be usable by passengers generally and if the passageways leading to and from the elevator are well-lit and neat and clean.

In considering such means of access, school systems should bear in mind the security requirements of students with disabilities. Students with disabilities should not be required to use poorly lighted entrances or otherwise take undue personal security risks compared to other students.

Questions are frequently raised regarding whether carrying an individual with a disability is an acceptable method of providing program access. Carrying is contrary to the goal of providing accessible programs, which is to foster independence. Carrying a person with a disability to achieve program accessibility is therefore unacceptable, except in manifestly exceptional cases [28 C.F.R. § 35.150(b)(1) (Preamble)].

In the very limited situations in which carrying is permitted, carriers must be instructed on the safest and most dignified means of carrying and the service must be provided in a reliable manner [28 C.F.R. § 35.150(b)(1) (Preamble)]. Liability issues may be relevant when this option is being considered. School representatives are encouraged to consult with persons with disabilities on the most acceptable method of providing access.

FUNDAMENTAL ALTERATIONS OR UNDUE BURDENS

The Title II regulation does not require a public entity to take any action that would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens [28 C.F.R. § 35.150(a)(3)]. This provision codifies case law interpreting the Section 504 regulation for federally assisted programs.

Compliance with the Title II program accessibility provisions will not generally result in an undue financial or administrative burden [28 C.F.R. § 35.150(a)(3) (Preamble)]. Individuals with disabilities should have access to public entities' programs in all but the most unusual situations. When a school district does justify noncompliance by claiming that compliance would result in a "fundamental alteration" to its program or constitute an "undue burden," the Title II regulation places the burden of proof on the school district [28 C.F.R. § 35.150(a)(3)]. Further, a decision regarding whether a burden is undue must be based on all of the public entity's resources available for use in the funding and operation of the service, program, or activity [28 C.F.R.§ 35.150(a)(3)].

28.C.F.R. §35.150 Existing facilities. ***(a) General...***
(3)... *In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.*

Although Title II does not specifically define the elements of an undue burden, school districts may want to look to the following factors, spelled out under Title I of the ADA, for guidance in determining whether an undue burden exists:

- the nature and cost of the particular action;
- the overall financial resources available to fund the specific program in question and the effect of resource expenditure on the rest of the expenses and resources of the program;
- the overall financial resources of the school district;
- the size of the school district, as measured in numbers of employees and students, and the number, type, and location of facilities; and
- the relationship of the program element in question to the program as a whole (in terms of geographic and administrative relationships) [See 29 C.F.R. § 1630.2(p)(2)].

The Title II regulation contains requirements for documenting the claim of undue burden or fundamental alteration that are not contained in the Section 504 regulation. Under Title II, the decision that compliance would result in an undue burden or fundamental alteration must be made by the head of the public entity or his or her designee [28 C.F.R. § 35.150(a)(3)]. In addition, the decision must be accompanied by a written statement of the reasons for that decision [28 C.F.R. § 35.150(a)(3)].

Finally, the undue burden/fundamental alteration defense is not absolute [28 C.F.R. § 35.150(a)(3) (Preamble)]. It does not relieve public school systems of all obligations to individuals with disabilities. Public school systems must still take any other steps that do not result in an undue burden or fundamental alteration but are necessary to ensure that individuals receive the benefits or services provided by the school district [28 C.F.R. § 35.150(a)(3) (Preamble)].

DESIGNATED HISTORIC BUILDINGS

Some school systems may include buildings that have a historic designation. The Title II regulation makes a distinction between public entities that conduct all or a portion of their programs in historic properties and public entities that conduct historic preservation programs that have preservation and experience of the historic property as primary purposes. Requirements regarding these two distinct types of programs are presented below.

Historic properties. Historic properties are properties listed or eligible for listing in the National Register of Historic Places or designated as historic under state or local law [28 C.F.R. § 35.104]. The Title II regulation provides that a public entity is not required to take any action that would threaten or destroy the historic significance of a historic property [28 C.F.R. § 35.150(a)(2)]. This provision was included in order to avoid possible conflicts between the Congressional mandate to preserve historic properties and the mandate to make all programs and activities located in existing facilities accessible to individuals with disabilities [28 C.F.R. § 35.150(b)(2) (Preamble)].

Where public school systems conduct all or a portion of their programs in historic properties and the preservation and experience of the historic property itself are not primary purposes of the program, the historic property itself is not the program. Nonstructural changes that could be made to render the program accessible would include relocating all or part of the program to an accessible facility, purchasing or redesigning equipment, or using other standard methods of program accessibility that would not threaten or destroy significant historic features of the property [28 C.F.R. § 35.150(b)(2) (Preamble)]. These changes should be made as expeditiously as possible.

Historic preservation programs. Historic preservation programs are programs conducted by a public entity that have preservation of historic properties as a primary purpose (e.g., a tour of a historic building). Special program accessibility requirements and limitations apply to historic preservation programs. Because a primary benefit of the program is the unique experience of the historic property itself, public entities are required to give priority to methods that provide physical access to individuals with

disabilities [28 C.F.R. § 35.150(b)(2) (Preamble)]. Although the Title II regulation encourages public entities to give priority to methods that provide physical access, the Title II regulation does not require any action that would threaten or destroy the historic significance of the property or result in fundamental alterations in the nature of the program or in an undue burden [28 C.F.R. § 35.150(b)(2) (Preamble)].

Some nonstructural methods of achieving compliance, such as relocation to another facility, are not appropriate for historic preservation programs; the essence of the program or activity involves the experience of the historic property itself. Where it is not possible to provide physical access without threatening or destroying the historic significance of the property, fundamentally altering the nature of the program, or incurring an undue burden, creative methods of achieving program access must be sought that will offer persons with disabilities an appropriate experience of the historic property itself. For example, access might be provided by:

- using video tapes, audiotaped descriptions, photographs, slide shows, or other means to depict portions of a historic property that cannot be made architecturally accessible; or

- assigning persons to guide individuals with disabilities into or through portions of the property that cannot otherwise be made accessible [28 C.F.R. § 35.150(b)(2)].

Other innovative methods of rendering the program as accessible as possible may also be acceptable.

While the U.S. Department of Education's Section 504 regulation for federally assisted programs does not specifically mention historic properties, historic properties must also satisfy Section 504 program accessibility requirements. As with the Title II regulation, Section 504 is interpreted with enough flexibility to permit recipients of federal financial assistance to make programs accessible without impairing the integrity of historical facilities. No distinction has been made under Section 504, however, between historic properties and historic properties that are part of historic preservation programs.

PROVIDING ACCESS IN LEASED SPACE

Under the Title II regulation, school systems are encouraged, but not required, to lease accessible space. However, once a leased facility is occupied, the school system must provide access to all programs, services, and activities conducted in that space [28 C.F.R. § 35.151(c) (Preamble)]. The Section 504 regulation contains a similar requirement [34 C.F.R. § 104.4(b)(6)]. Leased facilities are subject to the program accessibility requirements for

existing facilities or new construction and alterations, depending upon the date that the buildings were constructed or altered [28 C.F.R. § 35.151(c) (Preamble)].

Obviously, the more accessible the space is to begin with, the fewer structural modifications will be required for particular employees whose disabilities may necessitate barrier removal as a reasonable accommodation. It will also be both easier and less costly to make programs and activities accessible to and usable by other individuals with disabilities [28 C.F.R. § 35.151(c) (Preamble)].

The Department of Justice suggests that public entities attempt to locate space that complies, at a minimum, with the federal requirements for leased buildings contained in the Minimum Guidelines and Requirements for Accessible Design published in the Architectural Barriers Act of 1968 at 36 C.F.R. § 1190.34 [28 C.F.R. § 35.151(c) (Preamble)]. These guidelines, which apply to the federal government, require that all leased buildings have: (1) an accessible route from an accessible entrance to the building to the parts of the building where the principal activities for which it was leased take place; (2) accessible rest rooms; and (3) accessible parking facilities.

Since the school system is responsible for ensuring accessibility to school functions that may be held off the school grounds — even those held for only one night, such as formal dances or receptions — it is recommended that school systems notify all components that have the authority to lease facilities for school functions of this obligation. It is important to ensure that the appropriate individuals are fully aware of program accessibility requirements as they plan conferences, social functions, or other gatherings on behalf of the school. In addition, vendors, private foundations, and other entities that lease space from the school district in order to provide services to the district should be included in the program accessibility self-evaluation. As contracts are renegotiated, accessibility requirements should be addressed in the contracts.

28 C.F.R. § 35.150 (d)
Transition Plan. *(1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.*

TRANSITION PLANS

As discussed in Chapter Three, both Title II and Section 504 require covered entities to develop transition plans that set forth the steps necessary to make structural changes to achieve program accessibility [28 C.F.R. § 35.150(d) and 34 C.F.R. § 104.22(e)]. Under Title II, public entities that employ 50 or more persons were required to have developed the plan by July 26, 1992 [28 C.F.R. § 35.150(d)(1)]. Under Section 504, all recipients of federal funds that make structural changes to achieve program accessibility were required to have developed a plan by December 3, 1977 [34 C.F.R. § 104.22(e)].

Scope

A Title II transition plan is required to include only programs and policies that were not previously included in a Section 504 transition plan [28 C.F.R. § 35.150(d)(4)]. Since programs may have changed significantly since the old plan was prepared, many public entities may find it simpler to include all of their operations in the transition plan than to attempt to identify and exclude specifically those that were addressed in a previous plan [28 C.F.R. § 35.150(d)(4) (Preamble)]. It should also be noted that public entities that are covered under Section 504 are not shielded from obligations under that statute, such as deadlines for making required structural changes, merely because they have met the Title II transition plan requirement [28 C.F.R. § 35.150(d)(4) (Preamble)].

Contents

School systems must develop a transition plan that documents structural barriers that have been identified and how they will be removed. Required contents for the Title II transition plan include:

- a list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities, including structural communication barriers (see Chapter Seven);
- a description of the methods to be utilized to remove these barriers and make the facilities accessible;
- the schedule for taking the necessary steps to achieve compliance with Title II (if the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period);
- the timeline for providing curb cuts, if the public entity has responsibility over streets, roads, or walkways; and
- the name of the official responsible for the plan's implementation [28 C.F.R. §§ 35.150(d)(2) and (3)].

Both the Section 504 and Title II regulations specify that the transition plan include the identification of physical obstacles, the description of methods to make programs accessible, steps for achieving accessibility, and the identification of the person responsible for implementation [28 C.F.R. § 35.150(d)(3) and 34 C.F.R. § 104.22(e)]. However unlike Section 504, Title II specifically requires public entities with responsibility for streets, roads, or walkways to include in their transition plans a schedule for providing curb ramps or other sloped areas at all locations where

pedestrian walks cross curbs en route to a building where a program is offered or to a location that provides access to public transportation [28 C.F.R. § 35.150(d)(2) and 28 C.F.R. § 35.150(d)(2) (Preamble)].

Participation of Persons with Disabilities in Plan Development

The Title II regulation states that public entities shall provide an opportunity for interested persons, including persons with disabilities or organizations representing individuals with disabilities, to participate in the development of transition plans by submitting comments [28 C.F.R. § 35.150(d)(1)]. The Section 504 regulation for federally assisted programs states that the transition plan shall be developed with the assistance of interested persons with disabilities, but does not specify the method of assistance [34 C.F.R. § 104.22(e)].

Deadline for Completion

Under the Title II regulation, structural changes must be made as expeditiously as possible, but they should have been made by January 26, 1995, which is three years from the effective date of the Title II regulation [28 C.F.R. § 35.150(c)]. Under the Section 504 regulation, structural changes were to be made by June 3, 1980 [34 C.F.R. § 104.22(d)].

NEW CONSTRUCTION AND ALTERATIONS

28 C.F.R. § 35.151 New construction and alterations. ***(a) Design and construction.*** *Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.*

Both Title II and Section 504 require that a new or altered facility (or the part that is new or altered) be readily accessible to and usable by individuals with disabilities [28 C.F.R. § 35.151 and 34 C.F.R. § 104.23]. However, Section 504 and Title II have different relevant time frames that are applicable to new construction and alterations, as well as different architectural accessibility standards that constitute compliance with requirements for new construction and alterations. Also, unlike Section 504, Title II has requirements regarding curb ramps and alterations to historic properties.

Coverage Under Title II

Under Title II, public school systems currently have a choice of adopting either UFAS or ADAAG in designing, constructing, or altering facilities on or after January 26, 1992 [28 C.F.R. § 35.151(c)]. ADAAG, which is the accessibility standard for privately owned places of public accommodation and commercial facilities under Title III of the ADA, has been adopted for interim use under Title II.

It is important to note that on June 20, 1994, the ATBCB published in the Federal Register an interim final rule which proposes that ADAAG be supplemented to include additional standards for state and local government facilities. On the same day, the Department of Justice published in the Federal Register a notice of proposed rulemaking which proposes that the Title II regulation be amended to adopt ADAAG, as revised in the ATBCB's interim final rule, as the ADA Standards for new construction and alterations covered by Title II. The ADA Standards would apply to facilities designed, constructed, or altered after the effective date of the amendment to Title II. Both proposed rules provide a 60-day comment period. Upon review of comments, the Department of Justice may publish a final rule to amend the Title II regulation to reference the new ADA Standards.

Coverage Under Section 504

For buildings constructed or altered on or after June 3, 1977, but prior to January 18, 1991, recipients of federal financial assistance are deemed to be in compliance with the Section 504 regulation through compliance with the American National Standards Institute (ANSI) Standards A117.1 – 1961 (R 1971) or substantially equivalent standards [34 C.F.R. § 104.23(c)]. Effective January 18, 1991, the ANSI standards were superseded by UFAS. All new construction and alterations to existing facilities made after January 18, 1991 must meet the minimum requirements of UFAS to be deemed in compliance with Section 504. In addition, while the Section 504 regulation provides that compliance with the provisions of UFAS constitutes compliance with the provisions of Section 504, the Department of Justice has taken the position that compliance with ADAAG would also constitute compliance with Section 504 requirements. Thus, a recipient could opt to comply with the ADAAG standards and would be in compliance with both Section 504 and Title II.

At the present time, a public entity is free to adopt either UFAS or ADAAG in constructing each of its facilities. However, once the choice of standards has been made, the entity must consistently utilize the standard in the construction of the particular facility for which it was adopted. For example, a public entity may not follow ADAAG on one floor of a new building and then follow UFAS on the next floor *[The Americans with Disabilities Act Title II Technical Assistance Manual*, U.S. Department of Justice, November 1993, page 23].

Because it is anticipated that the Title II regulation will be amended in the near future to reference the new ADA Standards, and because compliance with ADAAG would constitute compliance with Section 504 requirements, this Guide suggests that, with respect to new construction and alterations that are in only the planning and design stages, school districts adopt ADAAG when constructing or renovating the facilities.

28 C.F.R. §35.151(b)
Alteration. *Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.*

28 C.F.R. §35.151(c)
Accessibility standards. *Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at §4.1.3(5) and §4.1.6(1)(j) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.*

Coverage Under Both Title II and Section 504

As discussed earlier in the chapter, a public entity covered under both Title II and Section 504 could operate a facility that would be an *existing* facility under Title II and yet constitute *new construction* under Section 504 (e.g., where a facility was built before January 26, 1992, but on or after June 3, 1977). In these cases, public entities that are also recipients of federal financial assistance must meet the program accessibility requirements for existing facilities under Title II as well as the accessibility standards for new construction under Section 504.

ADAAG and UFAS

Both ADAAG and UFAS are based on model design standards generated by the American National Standards Institute and, as a result, have a similar format. However, while the requirements of ADAAG and UFAS are generally consistent, there are a number of significant differences. For example, ADAAG contains requirements for TDDs in new construction, while UFAS does not [§ 4.1.3(17)(c), *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991)]. Unlike UFAS, ADAAG requires Braille on signs designating permanent rooms and spaces (e.g., rest room signs, room numbers, exit signs) and on elevator hoistway entrances and elevator car control indicators [§ 4.1.2(7), § 4.1.3(16)(a), § 4.30.4, § 4.10.5, and § 4.10.12(2), *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991]. There are also differences in the requirements concerning seating and assistive listening systems in assembly areas, the number of accessible check-out aisles in mercantile facilities, and the spacing between the top of handrail gripping surfaces and ramp surfaces [§ 4.1.2(18), § 4.33.3, § 4.33.7, § 7.3 and § 4.8.5(5), *Uniform Federal Accessibility Standards* and § 4.1.3(19), § 4.33.3, § 4.33.7, § 7.3 and § 4.8.5(5), *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991)].

Public school systems that choose to follow ADAAG are not entitled to the elevator exemption contained in ADAAG [28 C.F.R. § 35.151(c)]. Under ADAAG, elevators are not required in facilities that have fewer than three stories or fewer than 3000 square feet per story [§ 4.1.6(1)(k)(i), *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991)]. The Title II regulation does not permit the application of a lesser standard than Section 504. Since the elevator exemption results in application of a lesser standard, it therefore does not apply when public entities follow ADAAG [28 C.F.R. § 35.151(c) (Preamble)].

Due to the existence of a wide range of disabilities that vary in severity, it is important to understand that ADAAG and UFAS requirements are *minimum* accessibility requirements. There may be situations when a facility may not be accessible to a particular person with disabilities even though the institution is adhering to

the minimum requirements specified in ADAAG or UFAS. For example, the standard height of 17–19 inches for a water closet (toilet) specified in ADAAG and UFAS may be too high for an individual who is of small stature, or the specifications for grab bar heights may be too high to accommodate the transfer techniques of some individuals.

A district's adherence to ADAAG or UFAS does not relieve it of its obligation under Title II and Section 504 to make its program accessible to a particular individual. As discussed earlier, the program accessibility provisions of Title II and Section 504 require that no qualified person with a disability be denied access to a covered entity's facility because it is inaccessible to or *unusable by* individuals with disabilities. In the situation just described, while the water closet is accessible, it may be *unusable* by particular individuals. Modifications would be required to make the water closet usable by these individuals, unless those modifications would impose an undue burden on the district.

Questions are frequently asked concerning the actions that a school district should take if neither ADAAG nor UFAS contain specific standards for a particular type of facility. In such cases, the technical requirements of the chosen standard should be applied to the extent possible. If no standard exists for particular features, those features need not comply with a particular design standard. However, the facility must still be designed and operated to meet other Title II and Section 504 requirements, including program accessibility.

EXAMPLE:
What accessibility requirements apply in this instance?

A school district is designing and constructing a playground. Because there are no ADAAG or UFAS standards for playground equipment, the equipment need not comply with any specific design standard. The Title II and Section 504 requirements for equal opportunity and program accessibility, however, may obligate the school district to provide an accessible route to the playground, some accessible equipment, and an accessible surface for the playground.

Curb Ramps

Unlike Section 504, the Title II regulation requires that newly constructed or altered streets, roads, and highways contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway [28 C.F.R. § 35.151(e)(1)]. In addition, newly constructed or altered street-level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways [28 C.F.R. § 35.151(e)(2)]. These provisions will likely affect few school districts.

Alterations to Historic Properties

Title II also provides that alterations to historic properties must comply, to the maximum extent feasible, with the special access provisions for historic properties established by section 4.1.7 of UFAS or section 4.1.7 of ADAAG [28 C.F.R. § 35.151(d)(1)]. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be used.

The decision to use alternative standards for a particular feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons should be invited to participate in the decision-making process. In rare situations, complying with even these minimal alternative requirements will threaten or destroy the historic significance of a feature of the building or facility. In such a case, the public entity need not make the structural changes required by ADAAG or UFAS, but alternative nonstructural methods of achieving access must be provided (i.e., using audiovisual materials and devices to depict portions of a historic property that cannot otherwise be made accessible) [28 C.F.R. § 35.151(d)(2)].

MAINTENANCE OF ACCESSIBLE FEATURES

28 C.F.R. § 35.133 ***Maintenance of accessible features.*** ***(a)*** *A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.*

Under the Title II regulation, public school systems must maintain in working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities under the ADA [28 C.F.R. § 35.133(a)]. Inoperable elevators, locked accessible doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities [28 C.F.R. § 35.133 (Preamble)]. The Section 504 regulation does not contain a comparable provision concerning the maintenance of accessible features.

It should be noted that the Title II requirement regarding the maintenance of accessible features does not prohibit temporary obstructions or isolated instances of mechanical failure [28 C.F.R. § 35.133(b) (Preamble)]. Isolated or temporary interruptions in service or access due to maintenance or repairs are also not prohibited [28 C.F.R. § 35.133(b)]. However, allowing obstructions or "out of service" equipment to persist beyond a reasonable period of time would violate this requirement, as would repeated mechanical failures due to improper or inadequate maintenance [28 C.F.R. § 35.133 (Preamble)].

EXAMPLE:

Is this school district complying with its obligation to maintain accessible features?

A school district installs a lift in order to provide access for persons with mobility impairments to an auditorium stage. The lift is currently not in service, but it is being repaired. The lift has been out of service for a few hours.

Since the lift normally is functional and reasonable measures are being taken to repair it, the district is in compliance with its obligation to maintain accessible features. However, if district officials allow the lift to remain in disrepair for an unreasonably long period of time, then the district may be in violation of the maintenance of accessible features requirement.

IMPLEMENTATION

Conducting the Program and Facility Access Review

This section provides suggestions for the following activities:

- **Prepare to conduct the review**
- **Conduct facility access review**
- **Analyze program access options**
- **Develop the transition plan**

IMPLEMENTATION

Title II prohibits public entities from excluding people with disabilities from programs, services, or activities because of inaccessible facilities. In order to ensure program accessibility, it is recommended that each school system conduct a program and facility access review. The findings of this review will form the basis for completing the transition plan and identifying nonstructural and structural changes needed to ensure program accessibility.

The recommended approach to conducting the program and facility access review begins with careful planning, including the designation and training of the subcommittee that will coordinate the program and facility access review. A review of programs is conducted to evaluate the scheduling and space requirements of each program. Next, all existing facilities in which the school system operates programs are surveyed to identify all physical obstacles or barriers to the participation of people with disabilities. Findings from the program review are used in conjunction with the assessment of facilities to identify barriers to program participation.

The subcommittee then identifies nonstructural and structural solutions for the removal of barriers and determines the best solution to program access barriers in each situation. Nonstructural solutions must be implemented immediately. Physical access problems that require structural solutions are documented in the transition plan.

An overview of this process is depicted on the flowchart on the following page.

The regulations do not require the specific approach to the program accessibility self-evaluation that is described in this Guide. Your school system's particular approach to conducting the program and facility access review will depend on such factors as the size of the district (i.e., the number of programs and facilities operated by the district), available sources of expertise concerning architectural accessibility, staff resources, and available time and funding. However, the strategy suggested here is a proven, practical approach to carrying out the steps necessary for most public school systems to achieve compliance.

Each of these steps is discussed below. Worksheets designed to be utilized as part of the self-evaluation process are also discussed.

Prepare to Conduct the Review

The following planning steps (presented on page 178) will help school districts prepare to conduct a program accessibility self-evaluation and develop a transition plan:

Conducting the Program and Facility Access Review

PREPARATION

Select coordinator and subcommittee

Orient and/or train subcommittee members

Ensure participation of persons with disabilities

Conduct review of programs

Identify spaces to be surveyed

Choose a survey instrument

Establish self-evaluation schedule

Recruit and train facility access review team

FACILITIES REVIEW

Identify barriers in existing buildings

ANALYSIS

Identify nonstructural and structural solutions

Project long-term and short-term costs

Document fundamental alteration/undue burden decisions

PLANNING

Prepare a draft transition plan

Solicit comments

Adopt and implement the final plan

- Select a coordinator and a subcommittee to review program and facility access.
- Orient and/or train subcommittee members.
- Ensure participation of persons with disabilities.
- Conduct the review of programs.
- Identify the spaces to be surveyed for the facility access review.
- Choose a self-evaluation survey instrument for the facility access review.
- Establish a schedule for the self-evaluation.
- Train the facility access review team.

Each of these steps will now be discussed in more detail.

1. **Select a coordinator and a subcommittee to review program and facility access.** The starting point for the program accessibility self-evaluation is to appoint an appropriate individual to coordinate the effort and to select a subcommittee responsible for overseeing the program and facility access review. The subcommittee should include staff with significant expertise to contribute to the review process. Persons commonly included on the subcommittee include regular and special education senior staff, senior staff with capital planning responsibilities, facilities managers, maintenance supervisors, members of local organizations of individuals with disabilities, architectural access professionals, and individuals responsible for planning and scheduling events. The school district also may want to establish separate teams to conduct the program review and the facility access review, respectively. In addition, the school district may want to establish subteams of these two separate teams at program sites.

> ***Worksheet 6–1 may be used to compile a list of individuals who are serving on the subcommittee overseeing your school district's program and facility access review. The names and titles of individuals should be provided. Information may also be provided regarding the unit they are representing and the particular skills they are contributing to the program and facility access review.***

2. **Orient and/or train individuals coordinating and conducting the review.** All persons coordinating and conducting the review should be fully informed about the Title II and Section 504 requirements concerning program accessibility. If at all possible, they should attend training on program accessibility. At a mini-

mum, they should receive a detailed briefing from the ADA coordinator or another equally informed person.

3. **Ensure the participation of persons with disabilities.** This participation can occur in a variety of ways. An initial meeting or series of meetings to identify concerns related to program accessibility can spur thinking regarding the review process. Individuals with disabilities can often identify key issues that may not be readily apparent to staff members who do not have disabilities. Persons with disabilities can also serve as members of the program accessibility subcommittee. The perspectives of persons with disabilities on the impact and relative importance of the barriers to program accessibility will be essential. Often, they can propose solutions that others might not identify.

Persons with disabilities who are familiar with the school district's programs should also review and comment on drafts of the transition plan. Their recommendations on priority-setting, the selection of nonstructural and structural options, and the timing of modifications will be invaluable as the plan is implemented. The transition plan should document the ways in which persons with disabilities, or representatives of organizations comprised of persons with disabilities, participated at each phase of the program and facility access review process.

4. **Conduct the review of programs.** Since the goal of the review process is to ensure access to all programs rather than to all facilities, it is essential to gather information on programs as well as facilities. In order to plan such nonstructural approaches to program accessibility as the reassignment or relocation of programs, the program accessibility subcommittee will need to know the following information:

a. **The current building and location within the building of each program.** Facility access information will not be useful without an understanding of how physical features affect program access.

b. **Program scheduling requirements.** Patterns of usage are of great importance in developing accessibility solutions. For example, a program that uses an accessible facility on a limited basis may be able to share the use of the space with another program. Such a solution may be more cost-effective than making structural alterations to a second facility.

c. **Program space requirements**. How much space does each existing program actually need and what kind of space is required? Information about the space requirements of programs is critical as options for providing program accessibility are considered.

Worksheet 6–2 may be used to record information about the scheduling and space requirements of programs and the current locations of programs.

5. **Identify the spaces to be surveyed.** Facilities that should be included in the facility access review must be identified. The facility access survey is most efficiently conducted by looking at all facilities and their uses simultaneously. A coordinated facility access review and program review can more efficiently result in program accessibility by providing the information to enable problem solving across program lines.

All facilities that contain programs operated by or for your school system must be reviewed. This includes buildings owned or leased by your district, as well as parks, outdoor areas, walkways and any other facilities used in the operation of programs.

Worksheet 6–3 may be used to compile information, by building, about the requirements of programs and the current locations of programs in order to select the best self-evaluation survey instrument and plan for the facility access review. A space is included where the subcommittee can note the specific person or team responsible for conducting the on-site survey of a particular structure. Any planned capital improvements to buildings should also be noted on Worksheet 6–3.

6. **Choose a self-evaluation survey instrument.** A number of self-evaluation survey instruments are available. The Facility Checklist (Worksheet 6–4), which is based on the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), is a modular tool that has been created for use by Title II entities. The ADAAG Checklist (also based on the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities) is a more detailed survey tool available from the Architectural and Transportation Barriers Compliance Board. For further information, contact the ATBCB. (See *Resources*.) Any facility access survey instrument that is chosen should not only evaluate access for people with mobility-related disabilities but should also identify structural barriers for people with visual and hearing disabilities.

Obviously, a school system with significant resources and expertise will be able to conduct a more detailed and comprehensive facility review than one with fewer resources. Entities with more limited resources can use a comparatively "low-tech" approach — handwritten survey forms instead of computerized data bases and more limited staff involvement — and still accomplish the same objectives. Whichever approach is chosen, the facility access review should be managed by the program accessibility subcommittee.

7. **Establish a schedule for the self-evaluation.** Establish a reasonable schedule for the completion of work and ensure that team members conduct assessments on a timely basis by monitoring their progress.

8. **Train the facility access review team**. The facility access review team should be familiar with the basic program accessibility requirements of Title II and Section 504, as well as with the survey and data collection instruments they will be using. Usually such training is conducted in-house, but outside training may be available and useful.

Conduct the Facility Access Review

The facility assess review team should have the following items available when undertaking site reviews:

- a copy of the site plan showing where public programs are located;
- collated forms for each building;
- measurement guides;
- clipboards;
- pens or pencils (writing must photocopy clearly);
- measuring tape;
- a regular or digital level for measuring the degree of the slope on ramps and other slope surfaces (a hand level is especially useful for long exterior slopes);
- chalk for marking distances on surfaces;
- a fisherman's scale or other device to measure the pressure required to open doors;
- a watch;
- a camera; and
- graph paper.

The facility access review team will identify barriers in each building surveyed. The facility access review team may also note solutions to barriers based on their review of buildings.

Although the Facility Checklist that is presented in Worksheet 6–4 is based on ADAAG, it is not designed for a comprehensive

evaluation of compliance with ADAAG's complete scoping and technical requirements. Rather, the survey questions that appear on the Checklist are designed to ensure that functional access is provided for persons with disabilities to most facilities. Also, some items on the Checklist require users to refer to ADAAG for particular specifications. Users of the Checklist should therefore be aware that they should check the ADAAG requirements themselves, independent of their use of the Checklist.

Although the appropriate standard for existing facilities is program accessibility rather than full compliance with facility standards such as ADAAG, the ADAAG standards do provide useful guidance for identifying architectural barriers. However, it is important to note that the ADAAG standards do not establish the minimum requirements for providing program access, and failure to comply with the ADAAG standards does not necessarily indicate a violation of Title II or Section 504 and does not necessarily require any corrective action. Rather, for existing facilities under Title II and Section 504, the real question is whether the covered entity's programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities.

It is important to note that the specifications in ADAAG, including those presented in the Facility Checklist, are based upon adult dimensions and anthropometrics. However, the Title II and Section 504 requirements both provide that departures from particular requirements of architectural accessibility standards for new construction and alterations by the use of other methods are permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided [28 C.F.R. § 35.151(c) and 34 C.F.R. § 104.23(c)]. Consistent with the concept of "equivalent facilitation," modifications may be made to the adult dimensions of particular requirements of ADAAG in order to better serve small children (e.g., the height of chairs, the height of tops of tables and work surfaces, the height of toilet seats, the height of drinking fountains, and the height of the top of handrail gripping surfaces).

Worksheet 6–4, Facility Checklist, is a modular survey tool that can be used to identify architectural barriers, as well as communication barriers, that are structural in nature and limit program access. As noted above, other survey instruments may also be used, such as the more exhaustive ADAAG Checklist.

Worksheet 6–5, Summary of Program Barriers, is used to document physical access barriers of programs. In order to be able to more efficiently analyze solutions to program accessibility barriers, information from Worksheet 6–2 regarding the special requirements of programs can also be documented on Worksheet 6–5.

Worksheet 6–6, Summary of Inaccessible Features, is used to summarize information about barriers identified in the survey of each facility and to analyze their impact on the accessibility and usability of the facility. Worksheet 6–6 utilizes the following scale in analyzing the impact of barriers to program accessibility: (1) safety hazard; (2) major barrier; (3) moderate barrier; and (4) neglible impact. It is easier to identify safety hazards, such as an object protruding into the path of travel, or major barriers, such as the lack of an accessible entrance, than it is to decide what level of impact a barrier has. Because people with disabilities bring a user perspective which is essential to this analysis, it is strongly suggested that individuals with disabilities participate in scoring items on the four-point scale and in developing brief descriptions of the functional impact of barriers.

Analyze Program Access Options

After the facility access review has been conducted and barriers have been identified at each program site, the program accessibility subcommittee is ready to assess findings. The subcommittee ensures that information is summarized to facilitate analysis. Summaries indicate where substantial physical barriers intersect with program operations to create barriers to access and use.

Next, subcommittee members identify potential structural and nonstructural solutions for program barriers, evaluating proposed solutions in terms of their relative cost and effectiveness in providing access. This requires a team effort, especially when programs are conducted in multiple facilities. All key persons should be involved as solutions are sought in order to avoid implementation barriers later.

Steps that must be accomplished include:

- identifying nonstructural and structural solutions,
- projecting long-term and short-term costs, and
- documenting fundamental alteration/undue burden decisions

1. Identify nonstructural and structural solutions. Where the program review and facility access review identify programs and facilities as inaccessible, the school system must take steps to make the programs accessible. Bear in mind that Congress did not intend that public entities expend large sums of money to retrofit buildings and facilities where other effective means of achieving equal opportunity to participate are available. If they

can create program accessibility, nonstructural methods are equally acceptable and should be considered before structural changes. The Department of Justice and the Department of Education encourage innovation and creativity in eliminating barriers — as long as the means used provide people with disabilities equal opportunity to participate in and benefit from the school district's programs.

For each program or service identified as inaccessible, the program accessibility subcommittee should brainstorm and create a list of the possible access solutions to afford program access. The solutions may include:

- reassigning programs, activities and services within the facility,
- reassigning programs, activities and services to another facility,
- redesigning or relocating equipment,
- providing or assigning human aides,
- altering facilities,
- constructing new facilities, or
- other options.

The subcommittee should develop a list of criteria to help them compare and choose among options. Some of the criteria that are important to consider include:

- **Integration.** Integration is a fundamental principle of Title II and Section 504. Priority should be given to methods supporting the integration of people with disabilities into programs and activities that provide interaction with people who do not have disabilities.
- **Preferences**. As discussed throughout this Guide, listening to and incorporating the ideas and concerns of people with disabilities is very important to creating successful programmatic and structural access solutions.
- **Capital planning information.** As the subcommittee develops recommended solutions, it should seek to obtain information regarding planned alterations, the planned closing of a facility, or other plans for each facility. Information regarding available land, planned new construction, and vacant or under-utilized facilities is also helpful in developing accessibility options.

2. Project long-term and short-term costs. As desired options are analyzed, the subcommittee should consider both the short- and long-term costs of each option as well as the sources of funds. The school district may have funds available for operations but not for capital improvements or vice versa. Existing capital or alteration plans should be considered in estimating costs. Making structural changes may be less difficult than anticipated when considered in the context of capital or alteration plans that are already scheduled or in process. Some structural solutions may be small in scale and able to be accomplished through operations budgets.

3. Document fundamental alteration/undue burden decisions. If there are any situations in which barriers were not removed by January 26, 1995 (the final date for completion of modifications included in the transition plan) — or will not ever be removed because to do so would constitute a fundamental alteration in the nature of the program, service, or activity, or impose undue financial or administrative burdens — justification must be documented. The fundamental alteration/undue burden determination must be made by the head of the public entity or his or her designee [28 C.F.R. § 35.150(a)(3)].

This Guide presents three worksheets that school districts may want to use in order to analyze and select nonstructural and structural solutions to ensure program accessibility. Also, one of the worksheets may be used to document fundamental alteration/undue burden determinations.

> ***Worksheet 6–7, a transition planning worksheet, may be used to determine whether physical accessibility barriers should be removed through nonstructural or structural modifications. Information collected on previous worksheets should assist the program accessibility subcommittee in analyzing the potential effectiveness of nonstructural barrier removal options in achieving program accessibility.***
>
> ***Worksheet 6–8 may be used to provide a summary of nonstructural modifications. It also includes a schedule for making nonstructural changes. Under Title II, nonstructural changes were to be made by January 26, 1992.***
>
> ***Worksheet 6–9A may be used to document architectural modifications and their costs. It also includes a schedule for making architectural modifications.***
>
> ***If applicable, Worksheet 6–9B may be used to list the locations of curb cuts and curb ramps needed to provide access to the sidewalks and pedestrian walks controlled by the school district. A single unit cost can be estimated***

unless there are unusual site conditions requiring extensive ramping. An estimated completion date for each curb ramp and curb cut should also be entered. It is useful to attach a map of the streets and walkways to Worksheet 6–9B. Worksheet 6–9B can then list numbers corresponding to numbered locations on the map.

Worksheet 6–9C may be used to document structural modifications that cannot be implemented in a timely manner for reasons of "fundamental alteration" or "undue burden." For structural modifications that could not be implemented by January 26, 1995, documentation should be provided regarding the reason for the delay and the anticipated completion date. For program accessibility barriers that will not be removed, documentation should be provided regarding the budgetary constraints or other factors that support the fundamental alteration/undue burden claim. Steps to be taken in lieu of barrier removal should be described.

Develop the Transition Plan

Worksheet 6–9 provides the basis for the development of the transition plan. The development of the transition plan should occur in a three-step sequence:

- Prepare a draft transition plan.
- Solicit comments on the draft transition plan.
- Adopt and implement the final transition plan.

1. Prepare a draft transition plan. A draft transition plan should be prepared that contains all of the components required by Title II. These components were discussed earlier in the chapter. The draft should be circulated for review and comment to individuals from a broad range of perspectives.

An important component of the transition plan is the timetable for structural modifications. To ensure that modifications are made in a timely manner consistent with the requirements of Title II, the school district's periodic capital planning and budgeting process must go hand-in-hand with the development of the final transition plan. Barrier removal projects can often be planned to coincide with other scheduled capital improvements. The involvement of facilities management staff as the transition plan is finalized is essential for cost-effective implementation and ongoing capital planning. School districts must also ensure that new construction and alterations proceed in accordance with Title II and Section 504 requirements. Incorporating access into

planned rehabilitation and new construction is far more cost-effective than retrofitting inaccessible buildings.

2. Solicit comments on the draft transition plan. Interested persons, including individuals with disabilities or organizations representing individuals with disabilities, must be given an opportunity to comment on the proposed plan. Though not required by Title II, a public meeting is an effective way of providing people with disabilities, organizations representing individuals with disabilities, and other interested parties an opportunity to comment on and discuss the transition plan. An actively involved advisory group comprised of individuals with disabilities is another way to get participation in the development of the transition plan.

3. Adopt and implement final plan. To complete the transition plan, revise the draft as necessary in response to comments, attach a copy of Worksheets 6–7 and 6–9 and any other supporting documentation as appendices, secure approval as necessary within the school district, and have the official responsible for implementation sign the final transition plan. The approved plan should be put into effect immediately. Be sure to clarify who is responsible for monitoring the plan as it is implemented and ensuring that deadlines are met.

Worksheet 6-1 **PROGRAM ACCESSIBILITY SUBCOMMITTEE**

SCHOOL DISTRICT: _____

NAME (ADA COORDINATOR): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Use this worksheet to identify individuals who are serving on the subcommittee overseeing your school district's program and facility access review. In the first column, write the name of the individual; in the second column, write the title of the individual. In the third column, information may be provided regarding the unit individuals are representing, if appropriate, and particular skills individuals are contributing to the program and facility access review.

Members of the Program Accessibility Subcommittee		
Name	**Title**	**Unit Represented/Skills**

Worksheet 6-2 PROGRAM INVENTORY

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Record information on all programs offered by the school district. Identify all special scheduling and space requirements under "Description."

Program	Description*	Building	Location (in building)

* *Include special scheduling and space requirements*

Worksheet 6-3 FACILITIES INVENTORY

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

For each building, identify any currently planned capital improvements and identify all programs currently located within the building. Give the name of the surveyor currently assigned to that building.

Building	Planned Capital Improvements	Programs	Program Location(s)	Surveyor

Worksheet 6-4 FACILITY CHECKLIST

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Parking

General Area/Building: _____	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Is there an adequate number of accessible parking spaces available?	☐	☐	☐		4.1.2(5)(a); 4.6.1

For guidance in determining the appropriate number of accessible spaces to provide, the table below gives the ADAAG requirements for new construction and alterations (for lots with more than 100 spaces, refer to ADAAG 4.1.2(5)(a)):

Total spaces:	Accessible:
1 to 25	1 space
26 to 50	2 spaces
51 to 75	3 spaces
76 to 100	4 spaces

Are accessible parking spaces at least 8 feet wide, with a 5-foot access aisle (two spaces can share an access aisle)?	☐	☐	☐		4.6.3; 4.1.2(5)(a)
Is one in every 8 spaces, but at least one, van-accessible with a 96-inch wide access aisle, and 98 inches of vertical clearance?	☐	☐	☐		4.1.2(5)(b); 4.6.5
Are the access aisles part of the accessible route to an accessible entrance?	☐	☐	☐		4.6.3; 4.3
Are the accessible spaces the ones closest to an accessible entrance?	☐	☐	☐		4.6.2
Is the slope of the accessible parking area and access aisle no more than 1:50?	☐	☐	☐		4.6.3
Are accessible spaces marked with a vertical sign showing the international symbol of accessibility? In addition, are there signs reading "Van Accessible" at van spaces?	☐	☐	☐		4.6.4; 4.30.7

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Passenger Loading Zones

General Area/Building: _____	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Is there an access aisle 60 inches wide.by 20 feet long adjacent and parallel to the vehicle pull-up space?	☐	☐	☐		4.1.2(5)(c); 4.6.6
Is the slope of the access aisle and the pull-up space no more than 1:50?	☐	☐	☐		4.6.6
If there is a curb between the access aisle and the vehicle pull-up space, is there a curb ramp?	☐	☐	☐		4.6.6; 4.7
If a walkway crosses or adjoins the driveway and there is no curb, does the walkway edge have a detectable warning surface?	☐	☐	☐		4.29.5
Is there at least 114 inches of vertical clearance provided at the accessible passenger loading zones and along at least one vehicle access route to it?	☐	☐	☐		4.6.5
Is there a sign displaying the international symbol of accessibility at the accessible loading zone?	☐	☐	☐		4.1.2(7)(b)

Exterior Route of Travel

General Area/Building: _____ Date: Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Is there at least one accessible route of travel from public transportation stops, accessible parking spaces, accessible passenger loading zones, public streets, and sidewalks to the accessible entrance?	☐	☐	☐		4.1.2(1); 4.3.2(1)
Is there at least one accessible route that connects accessible buildings, facilities, elements, and spaces that are on the same site?	☐	☐	☐		4.1.2(2); 4.3.2(2)
Is the accessible route(s) stable, firm and slip-resistant?	☐	☐	☐		4.3.6; 4.5.1
Is the accessible route at least 36 inches wide?	☐	☐	☐		4.3.3
If the accessible route(s) is less than 60 inches wide, are there passing spaces at least 60 inches by 60 inches, or T-intersections of corridors, located at reasonable intervals but not more than 200 feet apart?	☐	☐	☐		4.3.4; Fig. 3
Is there at least 80 inches of clear head room on every route? If an area adjoining an accessible route has less than 80 inches of clear head room, is a barrier to warn persons with visual impairments provided?	☐	☐	☐		4.3.5; 4.4.2; Fig. 8
Are all obstacles along routes of travel cane-detectable (located within 27 inches of the ground or higher than 80 inches, or protruding no more than 4 inches into the route of travel)?	☐	☐	☐		4.4.1; Fig. 8
If gratings are located in walking surfaces, are the openings of the grating no greater than 1/2 inch wide in one direction? Are the long dimensions of rectangular openings placed perpendicular to the dominant direction of travel?	☐	☐	☐		4.5.4
Is the cross-slope of the accessible route(s) no greater than 1:50?	☐	☐	☐		4.3.7
Is the running slope of the accessible route no greater than 1:20, or is there an accessible ramp if the slope is greater than 1:20 (use ramp survey)?	☐	☐	☐		4.3.7
Are walkway level changes no more than 1/4 inch, or if they are between 1/4 inch and 1/2 inch, are they beveled with a slope no greater than 1:2?	☐	☐	☐		4.3.8; 4.5.2
Are there curb cuts, ramps, platform lifts or elevators where there is a change in level greater than 1/2 inch?	☐	☐	☐		4.3.8; 4.5.2
Is there a curb cut wherever an accessible route crosses a curb?	☐	☐	☐		4.7.1

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Is the slope of the curb ramp no greater than 1:12? If there is not enough space to use a 1:12 slope or less, is the slope of the curb ramp no greater than 1:10 for a maximum rise of 6 inches, or 1:8 for a maximum rise of 3 inches?	☐	☐	☐		4.7.2; 4.1.6(3)(a)
Are maximum slopes of adjoining gutters, immediately adjacent road surface, or accessible route no greater than 1:20? Is the transition from the curb ramp to adjoining surfaces flush and free of abrupt changes?	☐	☐	☐		4.7.2
If a curb ramp is located where pedestrians must walk across the ramp, or where it is not protected by handrails or guardrails, does it have flared sides with a maximum slope of 1:10?	☐	☐	☐		4.7.5
Is the width of the curb ramp, not including the flared sides, no less than 36 inches?	☐	☐	☐		4.7.3
Is the surface of the curb ramp stable, firm and slip-resistant?	☐	☐	☐		4.5.1; 4.7.4

Ramps

General Area/Building: _____	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Are the slopes of ramps no greater than 1:12?	☐	☐	☐		4.8.2
Is the rise of each ramp run (vertical distance between landings) no greater than 30 inches?	☐	☐	☐		4.8.2
Is the cross slope no greater than 1:50?	☐	☐	☐		4.8.6
Do all ramps longer than 6 feet or with more than 6 inches rise, have railings on both sides?	☐	☐	☐		4.8.5
Are railings continuous, sturdy, and between 34 and 38 inches high?	☐	☐	☐		4.8.5
Is the width between railings or curbs at least 36 inches?	☐	☐	☐		4.8.3
Are ramps stable, firm, and slip-resistant?	☐	☐	☐		4.8.6; 4.5.1
Is there a 5-foot-long level landing at every 30-foot horizontal length of ramp, at the top and bottom of every ramp and where the ramp changes direction?	☐	☐	☐		4.8.4
Do ramps and landings with drop-offs have walls, railings, projecting surfaces, or curbs at least two inches high to prevent people from slipping off the ramp?	☐	☐	☐		4.8.7

Stairs *(Note: Stairs are not permitted as part of an accessible route.)*

General Area/Building:	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Do stairs have closed risers?	☐	☐	☐		4.9.2
Are stair treads no less than 11 inches?	☐	☐	☐		4.9.2
Do stairs have continuous handrails on both sides, with extensions beyond the top and bottom stairs?	☐	☐	☐		4.9.4
Do nosings project no more than 1-1/2 inches?	☐	☐	☐		4.9.3

Lifts

General Area/Building: _____	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
If platform lifts are used, can a person using a wheelchair enter, operate, and exit the lift without assistance?	☐	☐	☐		4.11.3
Is the platform lift at least 30 by 48 inches?	☐	☐	☐		4.11.2; 4.2.4
Is there at least 30 by 48 inches of clear space for a person using a wheelchair to approach to reach the controls and use the lift?	☐	☐	☐		4.11.2; 4.2.4
If there is a door on the lift, is the door accessible?	☐	☐	☐		4.13
Are controls between 15 and 48 inches high (up to 54 inches if a side approach is possible)?	☐	☐	☐		4.11.2; 4.2.5; 4.2.6
Are the controls operable with one hand, and without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.11.2; 4.27.4

Entrances

General Area/Building:	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Are at least 50% of all public entrances accessible? Is at least one accessible entrance a ground floor entrance?	☐	☐	☐		4.1.3(8)(a)(1)
Do all inaccessible entrances have signs indicating the location of the nearest accessible entrance?	☐	☐	☐		4.1.3(8)(d); 4.30
If not all entrances are accessible, are the accessible entrances identified by the international symbol of accessibility?	☐	☐	☐		4.1.2(7)(c); 4.30
Does at least one door at each accessible entrance have at least 32 inches clear opening (for a double door, at least one 32-inch leaf)?	☐	☐	☐		4.1.3(7)(a); 4.13.4; 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?	☐	☐	☐		4.13.6; Fig. 25
Is the threshold level (less than 1/4 inch high) or beveled with a slope no greater than 1:2 up to 1/2 inch high (3/4" maximum for exterior sliding doors)?	☐	☐	☐		4.13.8
Are door handles at accessible entrances no higher than 48 inches and operable with one hand and without tight grasping, pinching or twisting of the wrist?	☐	☐	☐		4.13.9
If there is a revolving door or turnstile at an entrance, is there an accessible door or gate next to it?	☐	☐	☐		4.13.2
On sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?	☐	☐	☐		4.13.9
Can accessible doors be opened without too much force (maximum is 5 lbf for interior doors)?	☐	☐	☐		4.13.11
If the accessible doors have closers, do they take at least 3 seconds to close to a point 3 inches from the latch?	☐	☐	☐		4.13.10

Lobbies and Corridors

General Area/Building: _____ | Date: | Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Does the accessible entrance connect with all accessible elements and spaces in the building?	☐	☐	☐		4.1.3(1); 4.3.2(3)
Is the accessible route to all public spaces at least 36 inches wide? If the accessible route turns around an obstruction less than 48 inches wide, is the route at least 42 inches wide on the approach to and exit from the turn and at least 48 inches wide at the base of the turn?	☐	☐	☐		4.3.3; Fig. 7
Is the cross-slope of the accessible route no steeper than 1:50?	☐	☐	☐		4.3.7
If the accessible route is less than 5 feet wide, are there passing spaces 5 feet by 5 feet or T-intersecting corridors located at reasonable intervals no more than 200 feet apart?	☐	☐	☐		4.3.4; Fig. 3
Is there at least 80 inches of clear head room on every route? If an area adjoining an accessible route has less than 80 inches of clear head room, is a barrier to warn persons with visual impairments provided?	☐	☐	☐		4.3.5; 4.4.2; Fig. 8
Are floors on an accessible route stable, firm, and slip-resistant?	☐	☐	☐		4.5.1
Is the slope no more than 1:20, or is there a ramp when the slope is greater than 1:20?	☐	☐	☐		4.3.7
If objects mounted to the wall have leading edges between 27 and 80 inches from the floor, do they project no more than 4 inches into the route of travel?	☐	☐	☐		4.4.1
Are walkway level changes less than 1/4 inch, or, if they are between 1/4 inch and 1/2 inch, are they beveled with a slope no greater than 1:2?	☐	☐	☐		4.3.8; 4.5.2
Are ramps provided for changes in level greater than 1/2 inch?	☐	☐	☐		4.5.2
Does at least one door into each public space have at least a 32-inch clear opening?	☐	☐	☐		4.1.3(7)(b); 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?	☐	☐	☐		4.13.6; Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?	☐	☐	☐		4.13.11

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Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.13.9
Are all thresholds level (less than 1/4 inch), or beveled with a slope no greater than 1:2, up to 1/2 inch high?	☐	☐	☐		4.13.8
Do signs which provide direction to, or information about, functional spaces of the building, comply with the appropriate requirements for directional signage?	☐	☐	☐		4.1.3(16)(b); 4.30
Do signs designating permanent rooms and spaces, such as rest room signs, signs at exit doors, and room numbers, comply with the appropriate requirements for tactile signage? Do all signs meet legibility requirements regarding contrast and character proportion?	☐	☐	☐		4.1.3(16)(a); 4.30
Do alarms have both visible and audible signals?	☐	☐	☐		4.1.3(14); 4.28

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Elevators

General Area/Building: _____ | Date: | Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Does the elevator have automatic operation and self-leveling features?	☐	☐	☐		4.10.2
Are there both visible and verbal or audible door opening/closing and floor indicators (one tone = up, two tones = down)?	☐	☐	☐		4.10.4
Are the call buttons in the hallway at least 3/4 inches wide and centered at 42 inches?	☐	☐	☐		4.10.3
Do hall call buttons have visual signals to indicate when each call is registered and answered?	☐	☐	☐		4.10.3
Is there a sign on the jamb at each floor identifying the floor in raised and Braille letters?	☐	☐	☐		4.10.5; 4.30.4
Is the door opening at least 36 inches wide?	☐	☐	☐		4.10.9
For a centered opening, is the minimum inside dimension of elevator cars 51 inches by 80 inches?	☐	☐	☐		4.10.9
For an off-center opening, is the minimum inside dimension of elevator cars 51 inches by 68 inches?	☐	☐	☐		4.10.9
Are car control buttons no higher than 48 inches for forward reach and 54 inches for side reach?	☐	☐	☐		4.10.12(3)
Do the controls inside the cab have raised and Braille lettering?	☐	☐	☐		4.10.12(2); 4.30.4
Are the emergency controls grouped at the bottom of the control panel and centered no less than 35 inches above the floor?	☐	☐	☐		4.10.12(3)
If an emergency intercom is provided, is it usable without voice communication?	☐	☐	☐		4.10.14
Is the emergency intercom identified by Braille and raised letters and a raised symbol?	☐	☐	☐		4.10.14; 4.30.4
If the communication system is in a closed compartment, is the hardware on the compartment operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.10.14

Rooms and Spaces

General Area/Building:	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Are all aisles and pathways to materials and services at least 36 inches wide?	☐	☐	☐		4.3.3
If aisles between fixed furniture are less than 5 feet wide, are there passing spaces 5 feet by 5 feet or intersecting aisles at reasonable intervals not exceeding 200 feet maximum?	☐	☐	☐		4.3.4
Are floors stable, firm, and slip-resistant?	☐	☐	☐		4.5.1
Is carpeting low-pile, tightly woven, and securely attached?	☐	☐	☐		4.5.3
In routes through public areas, are all obstacles cane-detectable (located within 27 inches of the floor or higher than 80 inches, or protruding not more than 4 inches from the wall)?	☐	☐	☐		4.4.1; Fig. 8
Is there at least 80 inches of clear head room on every route? If an area adjoining an accessible route has less than 80 inches of clear head room, is a barrier to warn persons with visual impairments provided?	☐	☐	☐		4.3.5; 4.4.2; Fig. 8
Does at least one door into each public space have at least a 32-inch clear opening?	☐	☐	☐		4.13.5; 4.1.3(7)(b)
Are appropriate maneuvering clearances provided at accessible doors?	☐	☐	☐		4.13.6; Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?	☐	☐	☐		4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?	☐	☐	☐		4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?	☐	☐	☐		4.13.9
Do signs designating permanent rooms and spaces, such as rest room signs, signs at exit doors, and room numbers, comply with the appropriate requirements for signage? Do all signs meet legibility requirements regarding contrast and character proportion?	☐	☐	☐		4.1.3(16)(a); 4.30

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Do signs which provide direction to, or information about, functional spaces of the building comply with the appropriate requirements for directional signage?	☐	☐	☐		4.1.3(16)(b); 4.30
Are all controls that are available for use by the public (including electrical, mechanical, cabinet, game, and self-service controls) located between 15 and 48 inches for forward reach and between 9 and 54 inches for side reach?	☐	☐	☐		4.2.5; 4.2.6
Are they operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.27.4
If fixed or built-in seating or tables are provided in accessible public or common use areas, do at least 5%, but not less than one, of the fixed or built-in seating areas or tables provide 30 inches by 48 inches of clear floor space?	☐	☐	☐		4.1.3(18); 4.32.2
Are the aisles between fixed seating at least 36 inches wide?	☐	☐	☐		4.3.3
Are the tops of at least 5% of fixed tables or counters between 28 and 34 inches high?	☐	☐	☐		4.32.4
Are knee spaces at accessible fixed tables at least 27 inches high, 30 inches wide, and 19 inches deep?	☐	☐	☐		4.32.3
Are at least 50% of drinking fountains, but at least one, on each floor accessible?	☐	☐	☐		4.1.3(10); 4.15
Do the accessible wall- and post-mounted cantilevered units have clear knee space 27 inches high, 30 inches wide and 17 to 19 inches deep? Do these units have a minimum clear floor space 30 inches by 48 inches to allow a person who uses a wheelchair to approach the unit facing forward?	☐	☐	☐		4.15.5(1)
Do the accessible free-standing or built-in drinking fountains not having a clear space under them have clear floor space of at least 30 by 48 inches in front to allow a parallel approach to the unit?	☐	☐	☐		4.15.5(2)
Do the accessible drinking fountains have spouts no higher than 36 inches?	☐	☐	☐		4.15.2
Are controls on accessible drinking fountains mounted on the front or on the side near the front edge, and operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.15.4; 4.27.4
If pay or public-use phones are provided, is there clear floor space of at least 30 by 48 inches in front of at least one in each bank, that allows a parallel or perpendicular approach by a person using a wheelchair?	☐	☐	☐		4.1.3(17)(a), 4.31.2
Are the operable parts of the accessible phone(s) 15 to 48 inches high (9 to 54 inches if a side approach is possible)?	☐	☐	☐		4.31.3; 4.2.5; 4.2.6

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Do the accessible phones have push-button controls?	☐	☐	☐		4.31.6
Are the accessible phones hearing-aid compatible?	☐	☐	☐		4.31.5(1)
Are the accessible phones adapted with volume control? In addition, do 25%, but not less than one, of all other public phones have volume control?	☐	☐	☐		4.1.3(17)(b); 4.31.5(2)
Are the accessible phones and all the phones with volume control identified with appropriate signage?	☐	☐	☐		4.1.3(17)(b); 4.30
If there are four or more public phones in the building, is one of the phones equipped with a text telephone (TT or TDD)?	☐	☐	☐		4.1.3(17)(c)
Is the location of the text telephone identified by accessible signage bearing the international TDD symbol?	☐	☐	☐		4.30.7(3)
When a bank of telephones consists of three or more public pay phones, is at least one public pay phone equipped with a shelf and outlet?	☐	☐	☐		4.1.3(17); 4.31.9(2)
Do all banks of telephones that do not contain a text telephone have appropriate directional signage placed adjacent to them indicating the location of the text telephone? If the facility has no banks of telephones, is there appropriate directional signage provided at the entrance?	☐	☐	☐		4.30.7(3)
Do alarms have both visible and audible signals?	☐	☐	☐		4.1.3(14); 4.28

Toilet Rooms

General Area/Building: _____ | Date: | Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
If rest rooms are available to the public, is at least one rest room on each floor that has public rest rooms (either one for each sex, or unisex) on an accessible route and fully accessible?	☐	☐	☐		4.1.2(6); 4.1.3(11); 4.1.6(3)(e); 4.22; Fig. 30
Are there signs at inaccessible rest rooms that give directions to accessible ones?	☐	☐	☐		4.1.6(3)(e)(iii); 4.30
When not all toilet facilities are accessible, are accessible toilet rooms identified by the international symbol of accessibility?	☐	☐	☐		4.1.2(7)(d)
Do doors have at least a 32-inch clear opening?	☐	☐	☐		4.22.2
Are appropriate maneuvering clearances provided at doors?	☐	☐	☐		4.13.6; Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?	☐	☐	☐		4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?	☐	☐	☐		4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?	☐	☐	☐		4.13.9
Is there tactile signage identifying the rest rooms, placed on the wall at the latch side of the door, centered 60 inches above the floor?	☐	☐	☐		4.1.3(16)(a); 4.30
Is there a 5-foot diameter clear space or a T-shaped space in the rest room to make turns?	☐	☐	☐		4.22.3
Are all fixtures on an accessible route?	☐	☐	☐		4.22.7; 4.27

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Is there at least one wheelchair-accessible stall that is at least 5 feet wide, clear of the door swing, and at least 56 inches long if the toilet is wall-mounted or 59 inches long if the toilet is floor-mounted? If it is technically infeasible to provide such a standard stall, is there a stall that is either 36 by 66 inches or 48 by 66 inches if the toilet is wall-mounted or either 36 by 69 inches or 48 by 69 inches if the toilet is floor-mounted?	☐	☐	☐		4.17.3; 4.22; Fig.. 30
Can the door to the accessible toilet stall be operated without twisting or fine movement, on both the inside and outside?	☐	☐	☐		4.17.5; 4.13.9
Do the accessible toilet stalls have a minimum door opening of at least 32 inches?	☐	☐	☐		4.17.5; 4.13.5
Are there accessible grab bars in accessible toilet stalls?	☐	☐	☐		4.17.6; 4.26; Fig. 30
Are there accessible grab bars at accessible water closets not located in stalls?	☐	☐	☐		4.16.4; 4.26; Fig. 29
Are the accessible toilet seats 17 to 19 inches high?	☐	☐	☐		4.16.3
Are the flush controls on accessible toilets no higher than 44 inches and mounted on the wide side of toilet areas?	☐	☐	☐		4.16.5
Is the toilet paper dispenser at least 19 inches above the floor?	☐	☐	☐		4.16.6
Does one lavatory have a 30-inch-wide by 48-inch-deep clear space in front, with a maximum of 19 inches of that depth under the lavatory?	☐	☐	☐		4.19.3
Is the lavatory rim no higher than 34 inches from the floor?	☐	☐	☐		4.19.2
Is there at least 29 inches from the floor to the bottom of the lavatory apron?	☐	☐	☐		4.19.2
Is there at least 8 inches of clearance toward the wall provided for knee clearance?	☐	☐	☐		4.19.2; Fig. 31
Is there a maximum of 6 inches of clearance outward from the wall provided for toe clearance?	☐	☐	☐		4.19.2; Fig. 31
Can the faucet be operated with one hand and without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.19.5
Are hot water pipes and drain pipes insulated, or configured to avoid contact with the legs of a person using a wheelchair?	☐	☐	☐		4.19.4

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Are soap and other dispensers and hand dryers no higher than 48 inches for forward reach or 54 inches for side reach?	☐	☐	☐		4.27.3
Can they be operated with one hand and without twisting or fine movement?	☐	☐	☐		4.27.4
Is there a clear floor space of 30 by 48 inches in front of the dispensers?	☐	☐	☐		4.27.2
Is the mirror mounted with the bottom edge of the reflecting surface no higher than 40 inches?	☐	☐	☐		4.19.6
If alarms are provided in the rest room, do they have both visual and audible signals?	☐	☐	☐		4.1.3(14); 4.28

Shower Rooms

General Area/Building:	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Are shower rooms on an accessible route and fully accessible?	☐	☐	☐		4.1.3(11); 4.23.1
When not all shower rooms are accessible, are accessible shower rooms identified by the international symbol of accessibility?	☐	☐	☐		4.1.2(7)(d)
Do doors have at least a 32-inch clear opening?	☐	☐	☐		4.23.2; 4.13.5
Are appropriate maneuvering clearances provided at doors?	☐	☐	☐		4.23.2; 4.13.6; Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?	☐	☐	☐		4.23.2; 4.13.11
Are door handles 48 inches high or less and operable with one hand and without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.23.2; 4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?	☐	☐	☐		4.23.2; 4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?	☐	☐	☐		4.23.2; 4.13.9
Is there tactile signage identifying the shower rooms, placed on the wall at the latch side of the door, centered 60 inches above the floor?	☐	☐	☐		4.1.3(16)(a); 4.30
Is there a 5-foot diameter clear space or a T-shaped space in the rest room to make turns?	☐	☐	☐		4.23.3
If a standard shower stall is provided, is it at least 36 inches by 36 inches?	☐	☐	☐		4.21.2; Fig. 35
If a roll-in shower stall is provided, is it at least 30 inches by 60 inches?	☐	☐	☐		4.21.2; Fig. 35
Is appropriate clear floor space provided at shower stalls?	☐	☐	☐		4.21.2; Fig. 35
Is a seat provided in shower stalls 36 inches by 36 inches? Is it mounted between 17 and 19 inches above the shower floor on the wall opposite the controls and does it extend the full depth of the stall?	☐	☐	☐		4.21.3; 4.26.3

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Where a fixed seat is provided in a 30 by 60 inch minimum shower stall, is it a folding type and is it mounted on the wall adjacent to the controls?	☐	☐	☐		4.21.3; 4.26
Are accessible grab bars provided in accessible shower stalls?	☐	☐	☐		4.21.4; Fig. 37
Are accessible faucets and other controls that are operable with one hand and without tight grasping, pinching, or twisting of the wrist provided in accessible shower stalls?	☐	☐	☐		4.21.5; 4.27.4; Fig. 37
If provided, are curbs in shower stalls 36 inches by 36 inches no higher than 1/2 inch?	☐	☐	☐		4.21.7
If a 30 by 60 inch shower stall is provided, does it have no curb?	☐	☐	☐		4.21.7

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Assembly Areas

General Area/Building:	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Does at least one door into each public space have at least a 32-inch clear opening?	☐	☐	☐		4.1.3(7)(b); 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?	☐	☐	☐		4.13.6; Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?	☐	☐	☐		4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?	☐	☐	☐		4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?	☐	☐	☐		4.13.9
In assembly areas with fixed seating, is the required number of wheelchair locations provided (see table at §4.1.3(19)(a) of ADAAG)?	☐	☐	☐		4.1.3(19)(a)
Is each wheelchair space at least 48 inches deep for approach from the front or rear, and 60 inches deep for approach from the side?	☐	☐	☐		4.33.2
Do wheelchair spaces adjoin an accessible route that also serves as an accessible means of egress?	☐	☐	☐		4.33.3
Is at least one companion fixed seat provided next to each wheelchair seating area?	☐	☐	☐		4.33.3
Does an accessible route connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers?	☐	☐	☐		4.33.5
In assembly areas where audible communications are integral to the use of the space, are an adequate number of assistive listening systems provided?	☐	☐	☐		4.1.3(19)(b)
Is there signage indicating the availability of the assistive listening devices?	☐	☐	☐		4.1.3(19)(b)

Cafeterias

General Area/Building: _____	Date:	Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Does at least one door into each public space have at least a 32-inch clear opening?	☐	☐	☐		4.1.3(7)(b); 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?	☐	☐	☐		4.13.6; Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?	☐	☐	☐		4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?	☐	☐	☐		4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?	☐	☐	☐		4.13.9
Are at least 5%, but a minimum of one, of the fixed tables accessible?	☐	☐	☐		4.1.3(18); 5.1
Is the knee space at accessible tables at least 27 inches high, 30 inches wide, and 19 inches deep?	☐	☐	☐		4.32.3
Is the top of each accessible table or counter between 28 and 34 inches above the floor?	☐	☐	☐		4.32.4
Where possible, are the accessible tables or counters distributed throughout the space?	☐	☐	☐		5.1
Are all aisles between accessible fixed tables at least 36 inches wide?	☐	☐	☐		5.3
Where counter service is provided, is there at least a 60 inch long portion of the main counter that is no more than 34 inches high and that has at least 27 inches of knee space below or is service available at accessible tables within the same area?	☐	☐	☐		5.2
Do food service lines have at least 36 inches clear width?	☐	☐	☐		5.5

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Are tray slides no more than 34 inches above the floor?	☐	☐	☐		5.5
Are at least 50% of self-service food service shelves 15 to 48 inches for perpendicular approach and 9 to 54 inches for parallel approach?	☐	☐	☐		5.5
Are self-service shelves and dispensing devices for tableware, dishware, condiments, food, and beverages installed 15 to 48 inches for forward approach or 9 to 54 inches for parallel approach?	☐	☐	☐		5.6; 4.2
Do self-service shelves and vending machines have at least a 30- by 48-inch clear floor space?	☐	☐	☐		5.6; 5.8; 4.2
Are vending machines on an accessible route?	☐	☐	☐		5.8; 4.2.4

Libraries

General Area/Building: _____ | Date: | Reviewer:

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Does at least one door into each public space have at least a 32-inch clear opening?	☐	☐	☐		4.1.3(7)(b); 4.13.5
Are appropriate maneuvering clearances provided at accessible doors?	☐	☐	☐		4.13.6; Fig. 25
Can doors be opened without too much force (5 lbf maximum for interior doors)?	☐	☐	☐		4.13.11
Are door handles 48 inches high or less and operable without tight grasping, pinching, or twisting of the wrist?	☐	☐	☐		4.13.9
Are all thresholds level (less than 1/4 inch), or beveled, with a slope no greater than 1:2 up to 1/2 inch high?	☐	☐	☐		4.13.8
If there are sliding doors, is the operating hardware exposed and usable from both sides when the doors are fully open?	☐	☐	☐		4.13.9
If there is a turnstile or security device, is there an accessible door or gate adjacent to it?	☐	☐	☐		8.3; 4.13
Is at least one lane for each check-out area accessible?	☐	☐	☐		8.3
Are at least 5% (but a minimum of one) of fixed seating, tables or study carrels accessible?	☐	☐	☐		8.2
Is there a clear floor space of 30 by 48 inches for wheelchair spaces at accessible tables?	☐	☐	☐		8.2; 4.2
Are the tops of the accessible fixed tables between 28 and 34 inches above the floor?	☐	☐	☐		8.2; 4.32.4
Is there knee space under the accessible, fixed tables at least 27 inches high, 30 inches wide and 19 inches deep?	☐	☐	☐		8.2; 4.32.3
Are the aisles leading up to and between accessible tables and carrels at least 36 inches wide?	☐	☐	☐		8.2; 4.2.3
Is the clear aisle space at card catalogs and magazine displays at least 36 inches wide?	☐	☐	☐		8.4

Questions	In Compliance? Y	N	NA	Dimensions/Comments	ADAAG
Is the minimum clear aisle width between stacks at least 36 inches?	☐	☐	☐		8.5
Are card catalogs between 18 and 54 inches high?	☐	☐	☐		8.4

Worksheet 6-5 SUMMARY OF PROGRAM BARRIERS

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

PROGRAM NAME: _____

NOTES: _____

After reviewing all survey forms, use Worksheet 6-5 to document physical access barriers to programs that were identified in Worksheet 6-4. In order to be able to efficiently analyze solutions to program accessibility barriers, information from Worksheet 6-2 regarding the locations and special requirements of programs may also be documented on this worksheet.

Program Locations	Description of Program Barriers	Survey Page # (Worksheet 6-4)	Special Requirements of Program
List all buildings where the program is offered. Refer to Worksheet 6-2.			*Refer to Worksheet 6-2.*

Worksheet 6-6 SUMMARY OF INACCESSIBLE FEATURES

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

BUILDING NAME AND LOCATION: _____

NOTES: _____

For each facility use this worksheet to summarize information on barriers identified in the survey and to analyze their impact on the accessibility and usability of the facility. Use the scale provided at the bottom of each page to record the impact of barriers to program accessibility.

Survey Elements	Description of Barriers	Actual Dimensions (if applicable)	ADAAG or UFAS Requirements	Impact on Program Accessibility (use code below)	Notes
Accessible Entrance into Facility:					
Accessible route					
Ramps					
Parking and drop-off areas					
Entrance					
Emergency egress					
Signage					
Other					

CODE: 1=safety hazard 2=major barrier 3=moderate barrier 4=negligible impact

Survey Elements	Description of Barriers	Actual Dimensions (if applicable)	ADAAG or UFAS Requirements	Impact on Program Accessibility (use code below)	Notes
Access to Programs:					
Accessible route					
Doors					
Rooms and spaces					
Controls					
Seats, tables, and counters					
Ramps					
Stairs					
Elevators					
Lifts					
Signage					
Other					

CODE: 1=safety hazard 2=major barrier 3=moderate barrier 4=negligible impact

Survey Elements	Description of Barriers	Actual Dimensions (if applicable)	ADAAG or UFAS Requirements	Impact on Program Accessibility (use code below)	Notes
Access to Rest Rooms:					
Getting to the rest rooms					
Doorways and passages					
Stalls					
Lavatories					
Signage					
Other					
Other Elements:					
Libraries					
Food services					
Assembly areas					
Shower facilities					
Drinking fountains					
Telephones					
Alarms					
Other					

CODE: 1=safety hazard 2=major barrier 3=moderate barrier 4=negligible impact

Worksheet 6-7 TRANSITION PLANNING WORKSHEET

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

PROGRAM NAME: _____

NOTES: _____

Use this worksheet to determine whether physical accessibility barriers should be removed through nonstructural or structural modifications. Information collected on previous worksheets should be of assistance in analyzing whether barriers can be removed by nonstructural means.

Program Location(s)

Significant Barriers

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Access Options

Recommendations and Rationale

Worksheet 6-8 SUMMARY OF NONSTRUCTURAL MODIFICATIONS

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

PROGRAM NAME: _____

NOTES: _____

Use this worksheet to provide a summary of nonstructural modifications to achieve program accessibility. Also, indicate the schedule for making the nonstructural modifications.

Buildings	Description of Nonstructural Changes	Page Number (Worksheet 6-7)	Implementation Schedule

Worksheet 6-9a SUMMARY OF ARCHITECTURAL MODIFICATIONS

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Use this worksheet to provide a summary of architectural modifications to achieve program accessibility. Also, indicate the schedule for making the architectural modifications.

Building	Description of Structural Changes	Cost Estimate	Page Number (Worksheet 6–7)	Implementation Schedule

Worksheet 6-9b CURB CUTS AND CURB RAMPS

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

TOTAL NUMBER OF CURB CUTS/RAMPS: _____

NOTES: _____

Use this worksheet to provide information regarding the locations and cost of curb cuts and curb ramps needed to provide access to the sidewalks and pedestrian walks controlled by the school district. Also, indicate an estimated completion date for each curb cut and curb ramp.

Location of curb cuts and curb ramps (or map code number)	Cost Estimate	IMPLEMENTATION SCHEDULE 1992	1993	1994	1995
TOTAL					

Worksheet 6-9c DOCUMENTATION OF FUNDAMENTAL ALTERATIONS/UNDUE BURDENS

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

TOTAL NUMBER OF FACILITIES: _____

NOTES: _____

Use this worksheet to document structural modifications that cannot be implemented in a timely manner.

A) Modifications to be completed after January 26, 1995 (use additional sheets if needed)

Facility	Description of Structural Changes	Cost estimate	Reason for delay and anticipated completion date

B) Modifications not to be implemented (use additional sheets if needed)

Facility	Description of Structural Changes	Cost estimate	Explanation of fundamental alterations/undue burdens and steps to be taken in lieu of barrier removal

CHAPTER SEVEN

REQUIREMENTS FOR EFFECTIVE COMMUNICATION

Individuals with disabilities must have access to communication that is as effective as communication provided to individuals without disabilities, in order to have an equal opportunity to participate in programs, services, and activities. This chapter reviews requirements for effective communication under the Title II regulation.

The chapter begins with an overview of the requirement to provide effective communication. The chapter then presents a discussion of Title II requirements regarding the provision of auxiliary aids and services. Examples of technologies and devices that can provide alternatives to print, oral, and aural communication are offered. The chapter continues with a discussion of other significant Title II requirements concerning communications — interpreter services, telecommunication devices for the deaf, emergency telephone services, and information and signage. The chapter concludes with an examination of the fundamental alteration/undue burden exception and a brief description of structural communication features. Differences between the requirements of Title II and Section 504 with respect to communication are discussed throughout the chapter.

At the end of the chapter, a practical guide to conducting the self-evaluation of policies, procedures, and resources with respect to communication is presented. Worksheets are provided that can be used to conduct an initial self-evaluation, to conduct periodic reviews to identify areas in which modifications may be needed to remain in compliance, or to prepare an action plan to provide auxiliary aids and services.

AN OVERVIEW OF COMMUNICATION REQUIREMENTS

28 C.F.R. § 35.160
General. *(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.*

Under the Title II regulation, public elementary and secondary schools are required to ensure that students, parents, employees, employment applicants, and members of the general public with disabilities are able to experience communication that is as effective as that provided to people without disabilities [28 C.F.R. § 35.160(a)]. People with visual, hearing, and speech disabilities must all have the opportunity to receive and present communication in a manner that is appropriate and effective [28 C.F.R. § 35.160(a)]. Communication support must be provided in a manner that enables people with disabilities to participate on an equal basis with all others, unless to do so would result in a fundamental alteration in the nature of a service, program, or

activity or in an "undue" financial or administrative burden [28 C.F.R. § 35.164]. Such exceptions rarely apply. It is important to note that the fundamental alteration/undue burden exception does not apply to the provision of related aids and services that are necessary to ensure a free appropriate public education to qualified students with disabilities. (See discussion on pages 236 and 239.)

The self-evaluation must include a complete assessment of policies, procedures, and resources that will ensure that people with disabilities are not unlawfully excluded, segregated, or restricted in any way as the result of communication barriers.

Unlike the Title II regulation, the Section 504 regulation for federally assisted programs does not contain a separate Subpart for communications. However, the Section 504 regulation does contain a number of nondiscrimination requirements that result in an obligation to provide effective communication.

PROVIDING AUXILIARY AIDS AND SERVICES

28 C.F.R. § 35.160(b)(1)
A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

In order to provide equal access to public services, school systems are required by Title II to make appropriate auxiliary aids and services available whenever they are necessary to ensure effective communication [28 C.F.R. § 35.160(b)(1)]. Upon the request of a qualified person with a disability, public school systems must provide access to communication through appropriate auxiliary aids and services. Auxiliary aids and services include a wide range of services, equipment, and devices that provide effective communication to people with visual, hearing, or speech disabilities.

Providing a qualified sign language interpreter for an individual who is deaf is an example of an auxiliary service under Title II. Other examples of auxiliary aids and services for people who are *hearing impaired* include notetakers, computer-aided real-time transcription services (CART), amplified and hearing-aid compatible telephones, assistive listening systems, open or closed captioning and caption decoders, text telephones or telecommunication devices for the deaf (TDDs), and flashing alarms.

Auxiliary aids and services for people with *visual* disabilities include providing access to printed information through audiotape cassettes, computer diskettes, Braille or large print materials, or through the use of qualified readers; providing verbal descriptions of action and visual information to enhance the accessibility of performances and presentations; and making a staff member available as a guide to enable a person with limited vision to find his or her way along an unfamiliar route.

In addition to auxiliary aids and services that are available for use today, many other technologies will undoubtedly emerge in the future that will also constitute appropriate auxiliary aids and services.

It is very important to understand that there may be an overlap between the provision of *auxiliary aids and services* that are designed to ensure effective communication and *related aids and services* that are necessary to provide a free appropriate public education (FAPE) to qualified students with disabilities. As discussed in Chapter Four, under both Section 504 and Title II, in order to provide FAPE to qualified students with disabilities, public elementary and secondary schools that receive federal financial assistance must provide regular or special education, as well as related aids and services, designed to meet the individual educational needs of each qualified student with disabilities [34 C.F.R. § 104.33(b)(1) and 28 C.F.R. § 35.130(b)]. The concept of "related aids and services" applies to any supplementary aids, adjustments, and services, *including* those that are communication–related, that are necessary to ensure FAPE to qualified students with disabilities. Auxiliary aids and services that are designed to ensure effective communication and that are necessary to ensure FAPE are also considered related aids and services. These related aids and services must be provided in accordance with both the communications requirements of Section 504 and Title II and the requirements of Section 504 and Title II regarding the provision of FAPE.

The determination regarding whether a qualified student with a disability needs communication-related related aids and services to ensure FAPE is the responsibility of the placement team and must be addressed as part of the evaluation and placement procedures of Section 504 and Title II. The placement team would also determine the specific appropriate communication-related related aids and services the student may need to ensure FAPE. If the student's parents or guardians disagree with the placement team's determination, they have a right to challenge the decision through due process procedures.

The concept of "related aids and services" under Section 504 and Title II is broad, extending beyond the context of communication. On the other hand, "auxiliary aids and services" discussed in this chapter are limited to the context of communication. Equipment used to make physical accommodations for students with mobility impairments, psychological services, and physical and occupational therapy are examples of "related aids and services" under Section 504 and Title II, but they would not be considered "auxiliary aids and services" that are designed to ensure effective communication under Title II. In order to eliminate possible confusion regarding the provision of related aids and services to ensure FAPE and the Title II requirement to provide auxiliary aids and services to ensure effective communication, this chapter

provides only a few examples of communication-related related aids and services that are necessary to ensure FAPE.

As discussed in Chapter Two, questions are frequently raised regarding whether school districts must provide auxiliary aids and services for parents or the public for such programs and activities as graduation ceremonies, parent–teacher organization meetings, plays and other events open to the public, and adult education classes. Under Title II, public school systems must provide appropriate auxiliary aids and services for these programs and activities whenever necessary to ensure effective communication for parents and the public, unless providing the auxiliary aids results in an undue burden or in a fundamental alteration of the program [28 C.F.R. § 35.102 (Preamble)]. For example, school districts may have to provide qualified interpreters on request for members of the public at graduation ceremonies and for parents at parent–teacher organization meetings.

GUIDELINES FOR DETERMINING WHICH TYPES OF AUXILIARY AIDS AND SERVICES TO PROVIDE

28 C.F.R. § 35.160(b)(2) *In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.*

The Title II regulation has a requirement, not specifically contained in Section 504, that public school systems must give "primary consideration" to the requests of the individual with disabilities in determining what type of auxiliary aid and service is necessary [28 C.F.R. § 35.160(b)(2)]. This means the school system must give each person with a disability an opportunity to request the auxiliary aid or service of his or her choice. Further, under Title II, school districts must honor this request unless they can demonstrate that another aid or service will be effective for the individual requesting the service, that the proposed action would fundamentally alter the service, program, or activity, or that the action would result in undue financial and administrative burdens [28 C.F.R. § 35.164]. Even where a school district can demonstrate a fundamental alteration or an undue burden, the district must take other measures to ensure that it does not discriminate against individuals with disabilities.

Deference to the request of the individual with a disability is crucial because of the range of disabilities, the variety of auxiliary aids and services, and the various circumstances requiring effective communication. It is important to consult with the individual to determine the most appropriate auxiliary aid or service because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.

Thoughtful planning is required to handle requests for auxiliary aids and services expeditiously. Under Title II, factors that may influence whether a particular auxiliary aid or service provides effective communication include:

- **The particular needs of the person requesting the auxiliary aid or service.** As mentioned earlier, when an auxiliary aid or service is requested, primary consideration should be given to the aid or service requested by the person with a disability; otherwise, the particular individual's needs may not be adequately met in spite of the school system's efforts, and effective communication may not be achieved.

  EXAMPLE:
  Has this parent been offered effective communication?

  Jan, a parent who is deaf, wishes to attend a meeting of the Parents and Teachers Association. Jan is a native user of American Sign Language and knows little English. In advance of the meeting, Jan requested that the school provide her with an interpreter who is qualified to interpret into American Sign Language. However, the school provides an interpreter who is qualified to interpret into Signed English. The school has not provided Jan with communication that is equally effective to that provided to persons without disabilities.

- **The duration and complexity of the communication.** Longer, more detailed exchanges often require more powerful and faster modes of communication [28 C.F.R. § 35.160 (Preamble)]. For example, an exchange of handwritten notes might suffice for a deaf parent who is picking up a child at school and simply wants directions to the classroom. But if that parent is participating in a parent–teacher conference, an interpreter or other effective means of communication may be needed.

- **The context of the communication.** Environmental conditions, such as the difference between a structured office setting and an outdoor recreational setting, influence the effectiveness of various devices and techniques [28 C.F.R. § 35.160 (Preamble)].

- **The number of people involved.** Communication techniques that are effective between two people might not work well in a group context. For example, a person who has limited hearing may be able to understand one-to-one conversation in a quiet office setting, but may not be able to do so in a group setting [28 C.F.R. § 35.160 (Preamble)].

- **Importance and potential impact.** Some communications — such as those involving legal, financial, health, and safety issues — are particularly important and must be provided in ways that guard against errors, omissions, and misunderstandings [28 C.F.R. § 35.160 (Preamble)]. For example, if a kindergarten student has had an accident, and the student's deaf parent is receiving instructions from the school nurse

on follow-up care, it is particularly important that the parent have a clear understanding of what the nurse is saying.

Public school systems are obligated to respond to requests from individual members of the public for auxiliary aids and services that will enable them to benefit from the school's programs. However, in situations in which the demand for materials in alternative formats is predictable, school districts will probably want to provide certain widely distributed information in alternative formats even without a specific request in order to ensure timely availability of important material. For example, a school system might want to have an announcement of summer recreation programs run by the school system routinely available in large print, cassette, Braille, and computer disk formats.

Given the short timeline from the awareness of an individual's need for an auxiliary aid or service to the occurrence of some programs and activities, requests may occasionally be made that cannot readily be met in a timely fashion. This Guide recommends that when school districts inform individuals of upcoming programs, activities and services, they suggest that individuals with disabilities provide reasonable advance notice of their need for auxiliary aids and services. Plans should also be in place for providing acceptable alternatives to requested auxiliary aids and services. In many instances, an alternative to the original request may be appropriate. Clear communication with the person making the request is essential in finding a suitable accommodation.

EXAMPLE:
What alternatives are available to this request for materials in an alternative format?

A school district sponsors evening non-credit classes in arts and crafts for adults. At the beginning of the semester, Jennifer, who is blind, enrolls in one of the classes and requests that the school district provide her textbook in Braille. The district does not have the textbook available in Braille. However, the district finds the book available on tape through the Recording for the Blind library. Jennifer accepts the accommodation offered by the district.

TECHNOLOGIES AVAILABLE AS ALTERNATIVES TO VISUAL, AURAL, AND ORAL COMMUNICATION

There are two major types of communication barriers that prevent or detract from communication effectiveness:

1. **Visual:** Print materials, visual displays, and signage may present barriers to people with limited vision.

2. **Aural/oral:** "Aural" refers to information that is heard; "oral" refers to spoken communication. A person who is hearing-impaired experiences barriers related to aural communication. The same person may be able to communicate orally, however. A person who has a speech impairment, or a cognitive impairment that affects speech, may experience barriers in communicating orally, but have no difficulty receiving information that is conveyed aurally. Each person will require different auxiliary aids and services in order to be provided equally effective communication.

This section reviews some of the technologies currently available to provide effective communication and suggests possible applications for public school systems. However, this description of technologies is not exhaustive. New technologies are constantly emerging. The technologies presented here may also be used as related aids and services that are provided to qualified students with disabilities as part of their free appropriate public education.

Alternatives to Visual Communication

Materials presented in a visual format can inhibit communication with persons who are blind or partially sighted. The following are some of the auxiliary aids and services that may be used to overcome such barriers.

Alternative Formats. It is essential that information be available in a variety of formats in order to be accessible to users with a variety of disabilities. For example, school districts should ensure that persons who are blind or have low vision have access to materials in Braille, on audiotapes, large print, and other formats.

Braille is a tactile representation of written or printed language. It consists of characters made up of arrangements of raised dots. Not all blind persons read Braille, but many prefer it to tapes because it is easier to scan, easier to refer back to for information, and easier to reference. Braille is sometimes the only alternative form of visual information that a deaf–blind person is able to access since tapes and large print may be inaccessible.

Many people who have limited vision are able to read large print. Print is measured in "point" size. Standard print is usually 10–12 point. Large print is print that is larger than 16 point, usually 18 to 22 point. Large print can be produced at low cost using a photocopier that can enlarge. Many computer programs have the option of printing enlarged documents or formatting text in various font sizes.

Making audiotapes of such program material as textbooks and course listings is often a good alternative to written information. Some people who are blind or visually impaired cannot read, or

prefer not to read, Braille or large print; they find tapes more useful. Tapes are also sometimes helpful to people with learning disabilities such as dyslexia. Tapes can be prepared in-house or by a professional taping service.

Adaptations for Computers. Many individuals who are blind, including children, are computer literate and use computers every day as a way of accessing information. Transmitting information by providing a computer diskette or using e-mail may be good ways to overcome the barriers created by information presented in a visual format.

A wide range of computer software and hardware, as well as various other types of devices, are available to facilitate input and output by blind or partially sighted computer users. For example, software is available to control key input acceptance rates and to allow the cursor to be controlled from the keyboard instead of from the mouse.

Software is available to provide large print displays on monitors. Large print software has many applications. Many libraries, for example, use computerized displays that can be made available to partially sighted persons through such adaptations.

Screen readers (also called speech synthesizers and voice output) are available to create "talking computers" that read computer screens. The process used to achieve voice output on a computer requires both a screen reader software package and appropriate hardware (an internal or external voice synthesizer) to produce speech. This technology has a wide range of applications. Libraries, for example, can use screen readers to provide automated catalog data. Earphones can be used by speech synthesizer users in order to avoid disturbing other individuals in the same area.

Braille printers are another way of communicating screen content. They are operated like non-Braille printers and produce hard copy that can be read and kept for reference. Transcription software is required to convert the word-processed text into symbols the printer can recognize.

Another form of Braille output is a "refreshable Braille screen" that can translate text from a computer monitor to a Braille version presented on an attached piece of equipment. The Braille cells change as each new line is presented. This approach does not yield hard copy.

When a person who is blind needs access to print material that is not available, or readily available, in Braille, it can be scanned into a computer. "Optical character recognition" technology enables text to be printed in large print format, articulated by a screen reader, or provided as hard copy through a Braille printer. With appropriate Braille transcription software, the user can

enter text in standard print, review the text by producing a hard copy in Braille, and then produce a final version that can be shared with a sighted individual.

Braille input devices include portable notetaking systems. The portable notetaking devices have their own local storage (e.g., microcassette, floppy disk, random access memory) and their own built-in text editors. Their input mechanism is a keyboard with six keys and a space bar which is used to enter Braille. The output display can be a refreshable 20-cell display that can be connected to a Braille or standard printer, to both types of printers, or to a personal computer for file transfers.

Magnification Devices. Magnifying lenses — lighted or unlighted, portable or fixed, hand-held or stand-mounted — are a useful tool whenever visual materials are used as part of a presentation attended by partially sighted participants. For example, if a parent with limited vision attended his or her child's art class on Parents' Day, and the art instructor passed a photo of a small sculpture around the classroom for examination, a magnifying lens would enable the parent to appreciate the demonstration. Also, if the same parent attended a reading class, the teacher might arrange to provide a copy of the book with a magnifier so that the parent could follow the reading.

Alternatives to Aural/Oral Communication

People with various disabilities may be unable to receive or generate spoken communication. The following are some of the most widely used devices that can assist with communication.

Writing. In some situations there are simple alternatives to spoken communication. Pen and paper may be an easy form of communication in situations where communication is simple. In a more complicated situation other methods should be considered.

Computer-Aided Real-Time Reporting (CART). Recently a new type of translation service, called computer-aided real-time reporting, or CART, has become available as an option for deaf or hard of hearing people who read English fluently. This service is generally used in meeting or conference settings, but the service may also be provided for students in classes. Real-time reporters, trained as court stenographers, type out words as they are being spoken in a meeting or class and the text is simultaneously displayed on a computer monitor, video monitor, or projection screen. For assistance in obtaining this service, contact your local court stenotypist organization, agencies that provide interpreters, or other organizations serving people who are deaf or hard of hearing.

Assistive Listening Devices. Also called assistive listening systems, these devices can be used to enhance hearing in one-on-one discussions or in meeting rooms. They can be fixed or portable. FM systems, for example, use a microphone connected to an FM signal–sending device that can be attached to the speaker. The listener wears a portable headset that can be used anywhere in the room and is able to receive the amplified sound. Multiple listeners can benefit simultaneously from this type of system. It is important to note that with respect to new construction, both the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Uniform Federal Accessibility Standards contain scoping and technical requirements for assistive listening systems in assembly areas [§§ 4.1.3(19)(b) and 4.33, *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991) and §§ 4.1.2(18)(b) and 4.33, *Uniform Federal Accessibility Standards* (1985)].

Telecommunication Devices for the Deaf (TDDs). The Title II regulation requires that where a public school communicates by telephone with students, parents, employees, employment applicants, or the general public, TDDs or equally effective telecommunication systems must be used to communicate with individuals with impaired hearing or speech. TDDs are surprisingly inexpensive. The Title II requirements regarding TDDs are discussed in greater detail later in this chapter.

Telephone Amplification. Many hearing aids have a telephone setting that can amplify sound if an appropriate handset is used. The telephone company can provide a handset with the appropriate magnetic field intensity to be compatible with this type of hearing aid setting. Battery-powered, portable handset amplifiers are also available. The amplifier can slip over the handset of most telephones.

With respect to new construction, both the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Uniform Federal Accessibility Standards contain scoping and technical requirements for accessible public telephones equipped with volume controls [§§ 4.1.3(17)(b) and 4.31.5, *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991) and §§ 4.1.2(16)(b) and 4.31.5, *Uniform Federal Accessibility Standards* (1985)]. With respect to new construction, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities also specifically requires hearing-aid compatible telephones [§ 4.31.5(1), *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991)].

Adaptations for Computers. Since operating a personal computer is essentially a visual task, users who are deaf generally do not experience significant difficulties with computer technology. However, school systems will want to ensure that important

information conveyed by beeps or speech during computer-related tasks is also displayed visually for the user unable to benefit from the auditory information. Computer operating systems often have built-in options for visually displaying auditory alerts. If necessary, a flashing light signal should be installed that echoes the beeps.

Electronic Speech Aids. A number of devices are available that support the exchange of information electronically. Among them is a small device that accepts and displays typed text. Such a device could be stored in a library for ready use with customers who are deaf. Speech synthesizers may also be used to facilitate communications with persons who have speech impediments.

Captioning Television and Videotape Programming. Audio portions of television and videotape programming produced by public entities are subject to the requirement to provide equally effective communication for individuals with hearing impairments. Closed captioning of such programs is sufficient to meet this requirement [28 C.F.R. § 35.160 (Preamble)]. Public school systems may want audiovisual materials used for class work, or which are otherwise intended for public education, to carry captions. Closed captioning is an ideal format because the captioning is unseen unless it is needed.

Decoders. When a "closed captioned" film or video is shown, a decoder is used to "open" the captions and make them appear on screen.

INTERPRETER SERVICES

When sign language interpretation is necessary, Title II requires that it be provided by a "qualified interpreter." Under Title II, the term "qualified interpreter" is defined as an individual who is "able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary" [28 C.F.R § 35.104]. To satisfy this requirement, the interpreter must have the proven ability to effectively communicate the type of information being conveyed.

28 C.F.R. § 35.104 Definitions. ***Qualified interpreter*** *means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.*

The interpreter qualifications most appropriate in each instance will vary. Certified interpreters are not required; in some cases, experienced interpreters familiar with the subject area will do a better job of capturing the content than a certified interpreter who lacks subject area expertise.

It is generally not appropriate to use a family member or companion as an interpreter. The deaf or hard of hearing person has the right to request an impartial interpreter.

One commonly asked question is when an interpreter is required. Although a notepad and pen for written communication may be sufficient for simple conversations, an interpreter may be necessary when the information is complex or the exchange is lengthy. For example, a public lecture should be interpreted for members of the audience who are deaf. Factors to consider in determining whether an interpreter is required include:

1. the context of the event,

2. the number of people involved, and

3. the importance of the material being communicated [28 C.F.R. § 35.160 (Preamble)].

EXAMPLES:
Do these situations require interpreters?

1. *School officials notify Andrea, a parent who is deaf, about a meeting at which a decision will be made regarding whether her child should be suspended from school. In this situation, the importance of the material being communicated is such that the school district must provide Andrea with a qualified interpreter at the meeting.*

2. *Roberta, a deaf parent, goes to a school-sponsored bake sale. The interactions Roberta will have with other parents and students are informal and short. Therefore, an interpreter would not be needed and other methods of communication would suffice.*

Public school systems are responsible for providing interpreter services upon request, when they are necessary for effective communication, unless doing so would cause a fundamental alteration or undue burden [28 C.F.R. 35.164]. However, it is important to note that the fundamental alteration/undue burden exception does not apply to the provision of interpreter services that are necessary to ensure a free appropriate education for qualified students with disabilities.

TELEPHONE COMMUNICATIONS

Although the Section 504 regulation does not specifically address TDDs, Title II specifically requires that where public entities communicate with the public by telephone, TDDs or equally effective means must be used to communicate with persons who have hearing or speech disabilities [28 C.F.R. § 35.161]. Sometimes called text telephones (TTs) or teletypewriters (TTYs), these devices provide a printout or digital display (or both) that enables a person who is deaf or hard of hearing to hold a two-way

conversation through the written word. A telephone that is not equipped with a TDD device can receive a call from a TDD user only if a relay system is used to provide a spoken interface.

Title IV of the ADA, which covers telecommunications, requires all common carriers that provide telephone voice transmission services (i.e., telephone companies) to have provided telecommunications relay services throughout the area in which they provide service by July 26, 1993 [47 U.S.C. 225 (1990)]. Telephone relay services required by Title IV generally may be used to meet the requirement of Title II that public entities provide TDDs or equally effective telecommunication systems.

TDDs or equally effective telecommunication systems, such as relay services provided by telephone companies, must be provided at all public school offices and departments that provide for interaction by telephone with students, parents, employees, employment applicants, or the public. For example, TDDs or equally effective telecommunication systems may be required at school principals' offices, school nurses' offices, and guidance counseling offices. If a relay service is used, all persons who might use the service should receive information to help them use it effectively.

28 C.F.R. § 35.161 Telecommunication Devices for the Deaf (TDDs). *Where a public entity communicates by telephone with applicants and beneficiaries, TDDs or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.*

Where communication by telephone is a major function of a particular component within a public school system, TDDs should be available [28 C.F.R. § 35.161 (Preamble)]. Also, if a school does not presently make any public pay telephones available to students or parents in its facility, but does allow students without disabilities to use a telephone in the administration office to communicate with their parents, the school may be specifically required to provide a TDD so that students with hearing or speech impairments have a similar ability to communicate effectively with their parents. Where TDDs are installed, school districts should ensure that all employees who would use the TDDs are trained in their proper use.

It is important to note that, with respect to new construction and alterations to existing buildings and facilities, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities contains scoping and technical requirements for TDDs [§§ 4.1.3(17)(c), 4.1.6(1)(e), and 4.31.9, *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (1991)]. The Uniform Federal Accessibility Standards do not contain specific requirements regarding TDDs.

EMERGENCY TELEPHONE SERVICES

28 C.F.R. § 35.162 Telephone emergency services. *Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDDs and computer modems.*

Many public entities provide telephone emergency services by which individuals can seek immediate assistance from police, fire, ambulance, and other emergency services. These telephone

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emergency services — such as "911" services — are clearly an important public service whose reliability can be a matter of life and death.

Under Title II, but not Section 504, public entities that operate telephone emergency services must provide direct access to individuals who use TDDs and computer modems for telephone communication [28 C.F.R. § 35.162]. This provision affects all public school systems that provide such services. "Direct access" means that emergency telephone services are able to receive calls from TDDs and computer modem users *without* relying on outside relay services or third-party services. A public entity may, however, operate its own relay services within its emergency system, provided that the services for non-voice calls are as effective as those provided for voice calls in terms of time response.

INFORMATION AND SIGNAGE

28 C.F.R. § 35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

Under Title II, public school systems must ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities, and facilities [28 C.F.R. § 35.163(a)]. Signs must also be placed at all inaccessible entrances to each of the school system's facilities, directing users to an accessible entrance or to a location where information about accessible facilities can be obtained [28 C.F.R. § 35.163(b)]. The international symbol for accessibility must also be used at each accessible entrance of a facility. The international symbol for accessibility appears below:

Under the Title II regulation, where TDD-equipped pay phones or portable TDDs exist, clear signage should be posted indicating the location of the TDD. Also, the Department of Justice recommends that, in large buildings that have TDDs, directional signage indicating the location of available TDDs should be placed adjacent to banks of telephones that do *not* contain a TDD [28 C.F.R. § 35.163 (Preamble)].

Section 504 contains a notice provision similar to the Title II regulation. Recipients of federal financial assistance must adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of services, activities, and facilities that are accessible to persons with disabilities. However, this Section 504 provision does not specifically require signage [34 C.F.R. § 104.22(f)].

FUNDAMENTAL ALTERATIONS OR UNDUE BURDENS

The Title II regulation does not require a public school system to take any action that would result in a fundamental alteration in the nature of a service, program, or activity, or in an undue financial and administrative burden [28 C.F.R. § 35.164]. As discussed in Chapter Four and earlier in this chapter, it is important to note that the fundamental alteration/undue burden exception does *not* apply to the provision of related aids and services that are necessary to ensure a free appropriate public education for qualified students with disabilities.

When a public school system cites a fundamental alteration in a program or service or an undue burden as a reason for failing to provide a requested auxiliary aid or service, the Title II regulation places the burden of proof on the school system. A decision regarding whether there is a fundamental alteration or an undue burden must be based on *all* of the resources available for use in the funding and operation of the service, program, or activity [28 C.F.R. § 35.164].

As discussed in Chapter Six, the Title II regulation contains requirements for documenting the claim of fundamental alteration or undue burden that are not contained in Section 504. Under Title II, the decision that compliance would result in an undue burden or fundamental alteration must be made by the head of the public entity or his or her designee. This person should be a high level official — no lower than a department head — who has budgetary authority and who customarily makes spending decisions such as the one in question. In addition, the decision must be accompanied by a written statement of the reasons for that decision [28 C.F.R. § 35.164].

Claiming that an undue burden or fundamental alteration exists does not relieve a public entity of its obligations to provide access for persons with disabilities. Even if an entity is not able to undertake a particular measure in order to provide equally effective communication, it must still take other measures, to the maximum extent possible, to ensure that it does not discriminate against individuals with disabilities in any of its programs, services, or activities [28 C.F.R. § 35.164].

STRUCTURAL COMMUNICATION FEATURES

Communication features that are structural in nature are those that are fixed or built into the facility. These are not considered auxiliary aids; rather, they are part of the review of the facility for program accessibility and should be included in the transition plan. Examples of structural communication features include:

- flashing signals to inform people with hearing disabilities of a fire alarm;
- tactile signage with raised letters to enable people with visual disabilities to use an elevator panel or identify rest rooms, specific room locations, and exits;
- sound amplification devices such as public address systems and amplified receivers to increase the audible information that people with limited hearing are able to perceive; and
- FM broadcast systems to transmit amplified sound to people with limited hearing or descriptive information to people with limited vision.

See Chapter Six for a discussion of requirements related to the development of transition plans.

IMPLEMENTATION

The ADA requires that public entities provide communications for persons who have disabilities that are as effective as those available to persons who do not have disabilities. To ensure that this requirement is met, school districts should review both their written policies and the actual communications practices of all programs, activities, and services. The level and quality of communication accessibility required by Title II is higher than that which most public entities have previously provided. As a result, your school district's self-evaluation may well result in the development of new policies and procedures and require significant additional resources.

The recommended approach for reviewing communications policies and procedures throughout your school district begins with the appointment of a coordinator for the communications review and the designation of an appropriate subcommittee. The review should, of course, be conducted based on appropriate organizational units determined by the subcommittee (most probably those used for other self-evaluation components, but not necessarily). Often, the communications review is combined with the review of policies and practices to ensure conformity with nondiscrimination requirements (Chapter Four) and program accessibility requirements (Chapter Six).

Next, review communications throughout the school district to determine areas in which alternative forms of communication are currently unavailable but are required. Finally, information obtained from the communications self-evaluation should be summarized and reviewed carefully by the subcommittee to identify current procedures that should be modified, to determine purchases and procurements that should be made or planned to facilitate communication, and to note appropriate sources from which to obtain auxiliary aids and services.

Prepare to Conduct the Review

The review of *written policy* may be conducted either centrally by the ADA compliance team or by the communication subcommittee. A review of district-wide *communications practices* is also required. This review may be conducted by the ADA compliance team, by a communication subcommittee, by individuals selected for their expertise regarding communications (including consultants), by trained program staff, or by other methods. However, it is the recommendation of this Guide that program staff be actively involved in the review of both policies and practices for the following three reasons:

IMPLEMENTATION

Conducting the Review of Communications

This section provides suggestions for the following activities:

- **Prepare to conduct the review**
- **Review communications access**
- **Develop communication strategies**

1. Involving program staff in the early stages of review is often the best way to enlist their understanding and support for implementing change later in the process.

2. The review may identify programs that have communication resources and expertise in place that will be useful to other programs or to the entity as a whole.

3. The process can be used to evaluate the communication functions of each program and to assess the quantity and type of additional communications resources needed.

A two- or three-tier review is recommended. At a minimum, there should be a review at each program level followed by a district-wide review. However, most school districts will undertake an intermediate level of review and summation prior to the district-wide review.

Worksheet 7–1 may be used to document the names and titles of designated representatives of the communication subcommittee responsible for planning and coordinating the communications self-evaluation and for assessing the implications of the self-evaluation findings at the district level.

Review Communication Access

A methodical review of communications support provided in all programs, services, or activities is important even when it is already suspected that policies and practices are not in compliance with Title II requirements. First, through conducting the review, subcommittee members will identify program areas where auxiliary aids and services may be needed in order to provide effective communication. Also, the review process will result in information about the need throughout the school district for various types and amounts of auxiliary aids and services. The school district will then be able to utilize this information to make district-wide policy decisions and make necessary purchases and procedural arrangements to obtain auxiliary aids and services from providers.

The communications review should cover the following areas:

Communication in all programs, services, and activities. The self-evaluation should review:

- printed information that may limit the participation of people with visual disabilities;

- aural communication (information that is heard) that may limit the participation of people who are deaf or hard of hearing;

- oral information (information that is spoken) that may limit the participation of people with speech disabilities.

Telecommunications. The review must determine the current level of compliance with the following key requirements of the ADA:

- If staff members communicate over the telephone with the public, applicants, or program participants, a TDD or equally effective telecommunication system must be provided.

- If the entity provides emergency telephone services, direct access to a TDD must be provided.

Signage and information. The review must determine compliance with key requirements concerning signage and other means of providing information about accessible communication features. These requirements include the following:

- Accessible entrances must be identified. Signs directing the public to accessible entrances should be provided at all inaccessible facility entrances.

- Information regarding the existence and location of accessible services, activities, and facilities must be provided.

Worksheet 7–2, Communication Access Assessment, is designed to assess and document the current ability of programs to provide equally effective communication to people with disabilities.

The first part of the worksheet is completed by filling in two charts corresponding to the two major categories of communication barriers discussed earlier in the chapter (visual and aural/oral). On the left-hand side of the charts, list all types of information in each communication category that are involved in the operation of the program. Consider all aspects of the program, including classroom activities, outreach, advertising, application processes, daily operation, parent–teacher organization meetings, public meetings, and special events. On the right-hand side of the charts are columns with the names of common auxiliary aids and services. Check boxes to indicate auxiliary aids or services that are currently provided or available. Place an X in a box to indicate additional aids or services that may be needed to ensure equally effective communication for persons with disabilities.

The second part of the worksheet contains questions regarding:

- *primary consideration (responding to requests for aids and services),*
- *telephone communications and the use of TDDs,*
- *access information and signage, and*
- *emergency warnings and evacuation procedures.*

Develop Communication Strategies

Information collected should be summarized to facilitate review and analysis by the communication subcommittee. By assembling information in a format that enables the subcommittee to examine the needs of the public entity as a whole, needs can be projected more accurately and strategies adopted with greater confidence. Based on their findings, the subcommittee should make recommendations to guide the development of system-wide effective communication resources.

The subcommittee should determine whether communications capacity should be developed in-house or purchased through contracts with outside agencies. Some school districts may find it more cost-effective to purchase copiers to make large print documents, computer software for bigger fonts, or tape recorders for creating audiotapes. Many school districts will find it cost-effective to hire readers or interpreters on a part-time or even full-time basis because of the need for these services. Other school districts will find it more cost-effective to contract with other agencies to provide sign language interpreters or to transcribe written documents into Braille.

The analysis of communications resources can target three general types of communications resource development strategies:

1. **Local.** Establish procedures for optimum sharing of existing or new communications resources at the program or department level, such as copying machines that can enlarge documents to produce large print or personal computers that can generate diskettes in ASCII format.

2. **Central.** Distribute centrally located resources throughout the district. For example, provide access to a computer with Braille output, a real-time transcription service, and an audiocassette production service for all departments and programs.

3. **External.** Establish standards and procedures for contracting for communications services from sources outside the school district, such as for sign language interpretation.

The communication review team can also make specific decisions that will be reflected in budgeting and strategic planning. It can, for example, determine the number of TDDs that must be available and in what locations; the circumstances in which the use of a relay service will be effective; the number of employees who will need training in the use of TDDs; and the number of readers and interpreters needed. In order to refine these estimates, school districts can track the use of aids and services by people with disabilities over time in order to reflect the actual usage and need. It is recommended that systems be in place to collect this information and to review it periodically by using the expertise of persons with disabilities.

Worksheet 7–3, Communication Summary and Action Plan, is designed for use at two levels. It may be used to summarize the results of the Communication Access Assessment covering individual programs, services or activities. The same worksheet can then be used by the communication subcommittee to generate a summary of existing communications resources throughout the school district and communications resources throughout the district that need to be developed. This overall summary should provide a fairly comprehensive picture of the district's communication resources and needs. The worksheet also documents those situations in which the provision of effective communication would result in a fundamental alteration of the program or in undue financial or administrative burdens. (Remember that related aids and services that are necessary to ensure the provision of a free appropriate public education are not subject to the fundamental alteration/ undue burden exception.)

Worksheet 7-1 COMMUNICATION SELF-EVALUATION SUBCOMMITTEE MEMBERS

SCHOOL DISTRICT: _____

NAME (ADA COORDINATOR): _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Use this worksheet to identify individuals in each organizational unit who should be involved in the self-evaluation of communication policies and practices. In the first column, write the name and title of individuals who will represent organizational units. In the second column, write the name of the organizational unit.

Communication Subcommittee Members	
Name and Title	**Unit Represented**

Worksheet 7-2 COMMUNICATION ACCESS ASSESSMENT

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

Assess and document the current ability of your program to provide communication for persons with disabilities that is as effective as the communication provided to persons who do not have disabilities.

A. Communication Access

1. Visual Communication

Information that is communicated visually—such as through printed materials or visual displays—must be made accessible to people with visual disabilities through auxiliary aids and services.

Does the program involve information that is communicated visually? ☐ Yes ☐ No

In the chart below, list each type of information that is communicated visually. *Consider all aspects of the program, including, but not limited to, classroom activities, outreach, advertising, public meetings or hearings, parent–teacher organization meetings, ceremonies, and communication with the general public, parents, applicants, and other program participants. Examples may include brochures, forms, handbooks, textbooks, slide shows, videotapes, and visual displays.*

For each type of information, place a check (✓) below the auxiliary aids or services currently available to people with visual disabilities. Place an X below any additional aids or services that may be necessary to provide effective communication of the information. (More than one auxiliary aid or service may be needed for each.)

Types of information:	large print	Braille	audiotape	readers	verbal descriptions	computer disk	computer adaptations	other
1. Brochure (example)	X	✓	X	X		X		
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								

2. Aural/Oral Communication

(Note: "Aural" refers to information that is heard; "oral" refers to spoken information.)

Programs that communicate information aurally to applicants or participants or that require an applicant or participant to use oral communication must make that information accessible to people who have hearing or speech disabilities by providing auxiliary aids and services.

Does the program involve information that is communicated verbally? ☐ Yes ☐ No

In the chart below, list each type of information that is communicated aurally/orally. *Consider all communication involved in all aspects of the program, including, but not limited to, classroom activities, outreach, advertising, public meetings or hearings, parent–teacher organization meetings, graduation ceremonies, performing arts events, television programs or videotapes, and communication with the general public, parents, applicants, and other program participants. A variety of interpreters may be needed, from American Sign Language interpreters to oral interpreters for people who read lips or special interpreters for deaf–blind persons.*

For each type of information, place a check (✓) below the auxiliary aids or services currently available to people with hearing or speech disabilities. Place an X below any additional aids or services that may be necessary to provide effective communication of the information. (More than one auxiliary aid or service may be needed for each.)

Types of information:	interpreters	assistive listening devices	TDD	telephone amplification	notetakers	paper & pen	CART (real time)	captioning on films/videos	caption decoder	other
1. public forum (example)		X	X	✓	✓			X	X	
2.										
3.										
4.										
5.										
6.										
7.										
8.										
9.										

3. Policies and Procedures on Communication Access

Title II's regulations require that public entities provide people with disabilities an opportunity to request the type of communication technology and assistance they prefer to use. In the ADA regulations, communication technology and assistance are called *auxiliary aids and services.*

An entity must give primary consideration to an individual's preference for an auxiliary aid or service and must honor it unless the entity can provide another *effective* means of communication.

A public entity is not required to provide an auxiliary aid or service if it would result in a fundamental alteration to the program or in undue financial or administrative burdens.

Does the program inform people with disabilities that communication aids or services are provided upon request? ☐ Yes ☐ No

If so, please explain.

Does the program have a procedure for deciding which auxiliary aid or service to provide?
☐ Yes ☐ No

Does the procedure provide for consideration of an individual's preferred aid or service?
☐ Yes ☐ No

Does the procedure include a mechanism for determining that an aid or service provided other than the requested aid or service is an effective means of communication? ☐ Yes ☐ No

If the answer to any of these three questions is yes, please describe. (For questions answered no, solutions will be addressed in Worksheet 7–3.)

B. Telecommunications

1. Telephone Communication

When a public entity communicates with the public by telephone, Title II requires that TDDs or equally effective means be used to communicate with people who have hearing or speech disabilities. Title IV of the ADA mandates that telephone companies develop telephone relay systems, which may be effective for short, uncomplicated communications. Public entities should use TDDs wherever telephone communication is a substantial part of a program's operation. Your answers to the following questions will help you determine whether a TDD may be essential for your program.

Does the program communicate with the public over the telephone? ☐ Yes ☐ No

What kind of information is communicated by phone?

Are telephone communications ever lengthy, complex, or technical? ☐ Yes ☐ No

Does the program have a TDD? ☐ Yes ☐ No

If not, solutions will be addressed in Worksheet 7–3.

If so, has the staff been trained in the use of the TDD? ☐ Yes ☐ No

Please describe the training.

2. Telephone Emergency Services

If the program provides telephone access to emergency services, the regulations require that direct access (to the same number(s)) be provided to individuals who use TDDs; relying on a relay service is not acceptable.

Does the program provide telephone access to emergency services? ☐ Yes ☐ No
If so, does the program provide direct TDD access to the emergency telephone number(s)?
☐ Yes ☐ No

If not, solutions will be addressed in Worksheet 7–3.

C. Other Communication

1. Emergency Warning and Evacuation

Emergency evacuation procedures for the program, service, or activity must ensure that people with disabilities are made aware of emergencies and are aware of exit procedures.

Is there a means of ensuring that people who are hard of hearing or deaf are made aware of an activated alarm? ☐ Yes ☐ No

If not, solutions will be addressed in Worksheet 7–3.

Is there an established emergency evacuation procedure that addresses the needs of individuals with disabilities? ☐ Yes ☐ No

If not, please describe the procedures the program will use in facilities where means of egress are not accessible to provide safety and evacuation for people who cannot use stairs.

Do staff members receive training in emergency evacuation procedures? ☐ Yes ☐ No

Please describe.

2. Access Information

The Title II regulation requires that public entities ensure that people with disabilities can obtain information about the availability and location of accessible programs, services, activities, and facilities. Information regarding the location of accessible entrances, program sites, TDDs, and other access features can be provided in a number of ways, such as in handbooks and listings.

Explain how the program, service, or activity provides access information to program applicants, participants, parents, and the general public.

3. Signage

Title II requires that signs be placed at all inaccessible entrances to each of a public entity's facilities, directing users to an accessible entrance or to a location where information about accessible facilities can be obtained. The international symbol for accessibility must also be used at each accessible entrance of a facility. Also, where TDD-equipped pay phones or portable TDDs exist, clear signage should be posted indicating the location of the TDD.

Are signs placed at all inaccessible entrances to each of the facilities, directing users to an accessible entrance or to a location where information about accessible facilities can be obtained?
☐ Yes ☐ No

Is the international symbol for accessibility posted at each accessible entrance of facilities?
☐ Yes ☐ No

Where TDD-equipped pay phones or portable TDDs exist, is clear signage posted indicating the location of the TDD? ☐ Yes ☐ No

If the answer to any of these questions is no, solutions will be addressed in Worksheet 7–3.

Worksheet 7-3 COMMUNICATION SUMMARY AND ACTION PLAN

SCHOOL DISTRICT: _____

WORKSHEET COMPLETED BY: _____ **ORGANIZATIONAL UNIT:** _____

TELEPHONE: _____ **DATE:** _____

NOTES: _____

After reviewing Worksheet 7–2, summarize the results of the communication access assessment and identify actions needed to achieve compliance with ADA requirements.

1. Existing Auxiliary Aids and Services	**Where are these now available?**		
Summarize currently available auxiliary aids and services. Categorize by need (vision, hearing, speech).	Within program	Central location	Outside sources (list)

2. Needed Auxiliary Aids and Services

Summarize needed auxiliary aids and services to be purchased or contracted. Place an asterisk (*) next to those that will be provided upon request; all others should be available at all times. (Use additional sheets if necessary.)	**Where might these be provided?**		
	Within program	Central location	Outside sources (list)

3. Primary Consideration

Public entities must give each individual with a disability an opportunity to request the auxiliary aid or service of his or her choice. That choice must be given primary consideration and must be honored unless the entity can demonstrate that another effective means of communication is available or that the auxiliary aid or service requested would result in a fundamental alteration in the program or in undue financial or administrative burdens.

Summarize a standardized process for individuals to express their preferences for a particular type of auxiliary aid or service, and the process to ensure that an effective auxiliary aid or service is provided.

4. TDD Communications (Existing and Needed)

List programs that now have TDDs and identify programs for which TDDs should be provided. Identify those programs that provide emergency services for which TDDs will be provided.

Summarize plans for training staff in TDD use.

5. Emergency Warning Systems

Describe emergency warning systems and procedures, where they are located, and where they will be added or modified.

6. Access Information

Describe how information on access will be communicated to the public, program applicants, participants, and parents, and throughout the school system.

7. Signage

As appropriate, describe how the international symbol for accessibility will be placed at accessible entrances to facilities, and describe how signs will be placed at inaccessible entrances to facilities, directing users to an accessible entrance or to a location where information about accessible facilities can be obtained. As appropriate, describe how signage will be posted indicating the location of TDD-equipped pay phones or portable TDDs.

8. Fundamental Alteration and Undue Burdens

List auxiliary aids or services for effective communications that will not be be implemented because to provide them would cause a fundamental alteration to the program or undue financial or administrative burdens. (Use additional sheets if necessary.)

Program	Description of needed auxiliary aids and services, other communication issues	Cost estimate	Explanation of fundamental alteration OR undue financial or administrative burden

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CHAPTER EIGHT

COMPLIANCE PROCEDURES

This chapter reviews the enforcement procedures for Title II of the Americans With Disabilities Act of 1990 and the remedies available in the event that school districts are found not to be in compliance. It outlines the process for filing complaints in general and describes the specific process for employment-related complaints. Miscellaneous provisions related to such issues as attorney's fees are also discussed.

COMPLAINTS

The Title II regulation provides three ways individuals may seek redress if they believe that they have been discriminated against on the basis of disability: (1) by filing a complaint under the allegedly discriminating institution's own grievance procedures; (2) by filing a complaint with the federal agency responsible for oversight of the type of institution alleged to have discriminated, with any federal agency that funds the institution, or with the Department of Justice; or (3) by filing a lawsuit for injunctive relief and damages. Each of these three methods is discussed below. It is important to note that the regulation does not require an individual with a complaint to exhaust remedies available through the public entity's grievance procedure before filing a complaint with either a federal agency or court, nor does the individual have to exhaust federal administrative remedies before exercising his or her private right of action.

Filing Complaints Under Established Grievance Procedures

Individuals may complain under the institution's grievance procedures. In order to encourage public entities to resolve disputes internally, the Title II regulation requires that public entities with 50 or more employees establish internal grievance procedures for the resolution of complaints [28 C.F.R. § 35.107(b)]. (See Chapter Three, *Planning for Compliance*.)

Filing Complaints With the Designated Federal Agency

An individual may file a complaint with any federal agency he or she believes is the designated agency under Title II of the ADA (i.e., the federal agency responsible for overseeing enforcement of Title II for the particular type of public entity alleged to have committed the violation, an agency that provides funding

to the public entity subject to the complaint, or the Department of Justice) [28 C.F.R. § 35.170 (c)].

The U.S. Department of Education is the designated agency to enforce both Title II and Section 504 in public elementary and secondary education systems and institutions [28 C.F.R. § 35.190(b)(2)]. The Office for Civil Rights (OCR) is the agency within the U.S. Department of Education delegated the responsibility to enforce both Title II and Section 504. Accordingly, it is authorized to process complaints against public schools arising under both Section 504 and Title II in the same manner that Section 504 complaints are processed, i.e., through OCR's internal case processing procedures [28 C.F.R. § 35.171(a)(3)(i)]. Note that *employment-related* complaints against public entities with 15 or more employees that are federal fund recipients may be processed differently (see below).

Section 504 prohibits discrimination on the basis of disability in programs and activities, both public and private, that receive federal financial assistance. Because the Civil Rights Restoration Act clarified the application of Section 504 to *all the operations of an institution receiving federal financial assistance*, the programs and activities of virtually all public elementary and secondary education systems and institutions are already covered by Section 504. As a result, for public elementary and secondary systems and institutions, the compliance and enforcement procedures under Title II will be the same as the compliance and enforcement procedures under Section 504.

If the alleged discrimination occurs in a program, service, or activity of an institution that receives federal funding and the agency is therefore subject to Section 504, the procedures for administrative enforcement set forth in Section 504 will be used. This means that the sanctions for discrimination would include the loss of federal funding or referral to the Department of Justice for judicial proceedings. If the alleged discrimination occurs in an institution that does *not* receive federal funding, a designated agency will process the complaint and, if voluntary compliance cannot be achieved, refer the case to the Department of Justice for enforcement in accordance with procedures outlined in Subpart F of the Title II regulation. These procedures are similar to OCR's procedures for processing Section 504 complaints: Both establish intake mechanisms that require letters of acknowledgment to the complainant and the public entity, alternative means of dispute resolution, investigation of a complete complaint and resolution where possible, issuance of complaint resolution letters or letters of finding, and voluntary compliance agreements [28 C.F.R. §§ 35.171–35.173].

Pursuant to Title II, and/or Section 504, any individual who believes he or she or a class of individuals has been subjected to discrimination on the basis of disability by a public entity may

file a complaint [28 C.F.R. § 35.170]. Complainants have 180 days from the date of the alleged discrimination to file a complaint with any federal agency believed to be the appropriate designated agency unless good cause is shown to extend the time for filing.

Complaints filed under either Title II or Section 504 will be analyzed under both Section 504 and Title II if both are applicable. In assessing compliance, OCR must apply Title II standards, to the extent that Title II provides greater protection than Section 504. Additionally, Title II cannot be construed to adopt a lesser standard than Section 504 [28 C.F.R. § 35.103(a)].

28 C.F.R. § 35.103 Relationship to other laws. *(a) Rule of interpretation. Except as provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.*

If efforts to attain a settlement in a case under both Section 504 and Title II are not successful, OCR may seek termination of federal funds or refer the case to the Department of Justice, which may then file suit against the public entity in federal district court. Complaints filed only under Title II are referred to the Department of Justice for enforcement only if OCR's efforts to achieve voluntary compliance are unsuccessful [28 C.F.R. § 35.174].

Filing Lawsuits Through the Court System

In addition to using an institution's grievance procedures or filing an administrative complaint with a federal agency, individuals have the right to file a lawsuit in federal district court. In any action or administrative proceeding, a court or agency in its discretion may allow the prevailing party (other than the U.S.) reasonable attorney's fees, in addition to any other relief. The prevailing party is the party that is successful and may be either the complainant (plaintiff) or the covered entity against which action is brought (defendant). The United States is liable for attorney's fees in the same manner as any other party, but is not entitled to them when it is the prevailing party. Attorney's fees include litigation expenses such as expert witness fees, travel expenses, and costs.

EMPLOYMENT-RELATED COMPLAINTS

Complaints filed by job applicants or employees who believe they have been discriminated against in employment on the basis of disability by public elementary and secondary institutions may be processed by the U.S. Equal Employment Opportunity Commission (EEOC) or OCR. The EEOC enforces Title I of the ADA, which prohibits job discrimination by employers with at least 15 employees [29 C.F.R. § 1630.2(e)(1)]. The EEOC follows case procedures which, like OCR, involve fact-finding, informal resolution, and possible referral for enforcement to the Department of Justice if voluntary compliance cannot be achieved.

The EEOC processes all complaints of employment discrimination that arise under Titles I and II where there is no Section 504 jurisdiction. (Virtually all school districts are covered by Section 504.) OCR processes all complaints of employment discrimination that arise under Title II and Section 504 where there is no Title I jurisdiction. (Virtually all school districts are covered by Title I.)

A complaint that is covered by Title I and Section 504, whether or not it is covered by Title II, and that alleges only individual allegations of employment discrimination, will generally be processed by the EEOC. If the complaint is filed with the EEOC, that agency will handle it and it will be generally considered as filed under Title I only [59 Fed. Reg. 39906 (1994) (to be codified at 28 C.F.R. § 37.7 and 29 C.F.R. § 1640.7)]. If a complaint is filed with OCR, it will be referred to the EEOC, which has greater expertise in employment discrimination cases, unless the complainant specifically requests that OCR retain the case [59 Fed. Reg. 39905–06 (1994) (to be codified at 28 C.F.R. § 37.6(c) and 29 C.F.R. § 1640.6(c))]. When an employment discrimination complaint is filed with OCR that alleges a pattern or practice of employment discrimination, or that includes allegations of discrimination in non-employment benefits and services, it will be retained by OCR [59 Fed. Reg. 39906 (1994) (to be codified at 28 C.F.R. § 37.6(d) and 29 C.F.R. § 1640.6(d))].

Since the substantive protections provided by Title I and Section 504 are now identical, an individual's rights against discrimination in employment on the basis of disability can be vindicated under either statute [59 Fed. Reg. 39902 (1994)]. Complainants should be aware that available remedies may possibly differ depending upon whether they file a complaint with the EEOC or OCR. (For further information regarding available remedies, please contact the OCR regional office that serves your state. See *Resources*.) Also, it is important to note that an individual who files a complaint with a Section 504 agency, such as OCR, and who alleges discrimination both in employment and other services or a pattern or practice of discrimination, or who specifically requests Section 504 processing, does not preserve a private right of action under Title I of the ADA, unless the individual also files a charge with the EEOC under Title I of the ADA [59 Fed. Reg. 39902 (1994)].

RESOURCES

The following is a brief annotated list of useful sources of information and assistance available to help school districts understand and respond to their responsibilities under the ADA, Section 504 of the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act. Feel free to contact the organizations to identify specific resources that address your needs.

FEDERAL AGENCIES

The federal agencies listed below are responsible for implementing various facets of the ADA, Section 504 of the Rehabilitation Act of 1973, or the Individuals with Disabilities Education Act. All of these agencies provide technical assistance.

U.S. Department of Education
Office for Civil Rights
330 C Street, S.W., Room 5000
Washington, D.C. 20202
(202) 205-5413 (voice); (800) 358-8247 (TDD)

The U.S. Department of Education's (ED) Office for Civil Rights (OCR) enforces Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. OCR has the responsibility for enforcing Title II with respect to all programs, services, and regulatory activities relating to the operation of public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools) and public libraries. ED's Section 504 regulation applies to preschool, elementary, secondary, postsecondary, vocational, and adult education programs and activities, as well as other programs and activities that receive or benefit from federal financial assistance.

OCR investigates complaints filed by individuals, or their representatives, who believe that they have been discriminated against because of disability. OCR also initiates compliance reviews of institutions and agencies, and monitors the progress of institutions and agencies that are implementing corrective action plans negotiated by OCR. OCR attempts to resolve compliance problems identified in the course of an investigation through negotiation. However, if negotiation fails, OCR will initiate proceedings to terminate the institution's funding or refer the case to the Department of Justice for court action.

OCR offers technical assistance to help entities with responsibilities under the civil rights laws enforced by OCR achieve voluntary compliance by understanding their legal obligations, and to help those protected by the laws it enforces to understand their rights. As part of its technical assistance activities, OCR distributes information and materials and provides consultation on the requirements of the civil rights laws under its authority.

OCR consists of administrative offices that are located at the Department of Education's headquarters in Washington, D.C., and ten regional offices around the country. Addresses and telephone numbers for the regional offices are provided below.

Region I (CT, ME, MA, NH, RI, VT)
Office for Civil Rights, Region I
U.S. Department of Education
J.W. McCormack Post Office and
Courthouse, Room 222, 01-0061
Boston, MA 02109-4557
(617) 223-9662 (voice)
(617) 223-9695 (TDD)

Region II (NJ, NY, Puerto Rico, Virgin Islands)
Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza, 33rd Floor
Room 33-130, 02-1010
New York, NY 10278-0082
(202) 264-5180 (voice)
(202) 264-9464 (TDD)

Region III (DE, DC, MD, PA, VA, WV)
Office for Civil Rights, Region III
U.S. Department of Education
3535 Market Street
Room 6300, 03–2010
Philadelphia, PA 19104-3326
(215) 596-6772 (voice)
(215) 596-6794 (TDD)

Region IV (AL, FL, GA, NC, SC, TN)
Office for Civil Rights, Region IV
U.S. Department of Education
101 Marietta Tower, Suite 2700, 04-3010
Atlanta, GA 30301-2048
(404) 331-2954 (voice)
(404) 331-7816 (TDD)

Region V (IL, IN, MI, MN, OH, WI)
Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street
Room 700C, 05-4010
Chicago, IL 60605-1202
(312) 886-3456 (voice)
(312) 353-2541 (TDD)
Cleveland: (216) 522-4970 (voice)
(216) 522-4944 (TDD)

Region VI (AR, LA, MS, OK, TX)
Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building
Suite 2260, 06-5010
Dallas, TX 75202-9998
(214) 767-3959 (voice)
(214) 767-3639 (TDD)

Region VII (IA, KS, KY, MO, NE)
Office for Civil Rights, Region VII
U.S. Department of Education
10220 North Executive Hills Boulevard
8th Floor, 07-6010
Kansas City, MO 64153-1367
(816) 891-8026 (voice)
(816) 374-6461 (TDD)

Region VIII (AZ, CO, MT, NM, ND, SD, UT, WY)
Office for Civil Rights, Region VIII
U.S. Department of Education
Federal Building, Suite 310, 08-7010
1244 Speer Boulevard
Denver, CO 80204-3584
(303) 844-5695 (voice)
(303) 844-3417 (TDD)

Region IX (CA)
Office for Civil Rights, Region IX
U.S. Department of Education
Old Federal Building, 09-8010
50 United Nations Plaza
Room 239
San Francisco, CA 94102-4102
(415) 556-7000 (voice)
(415) 556-6806 (TDD)

Region X (AK, HI, ID, NV, OR, WA, American Samoa, Guam, Trust Territory of the Pacific Islands)
Office for Civil Rights, Region X
U.S. Department of Education
915 Second Avenue
Room 3310, 10-9010
Seattle, WA 98174-1099
(206) 220-7880 (voice)
(206) 220-7907 (TDD)

U.S. Department of Education
Office of Special Education and Rehabilitative Services
330 C Street, S.W., Room 3006
Washington, D.C. 20202
(202) 205-5465 (voice/TDD)

The U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) supports programs that assist in educating children with special needs, provides for the rehabilitation of youth and adults with disabilities, and supports research to improve the lives of individuals with disabilities. OSERS is divided into three program areas: the Office of Special Education Programs (OSEP), the Rehabilitation Services Administration (RSA), and the National Institute on Disability and Rehabilitation Research (NIDRR).

OSEP is responsible for administering programs relating to the free appropriate public education of all children, youth, and adults with disabilities. OSEP oversees programs to expand and improve special education, administers grants to state education agencies to help state and local districts serve children and youth with special needs, and monitors state programs to ensure that students with disabilities receive appropriate education and that their rights and those of their parents or guardians are protected. OSEP also administers programs to train special education teachers and conducts research in improved methods of special education.

RSA allocates grants to state vocational rehabilitation agencies to help individuals with physical or mental disabilities obtain employment through counseling, medical and psychological services, job training, and other individualized services. RSA also funds programs that train rehabilitation professionals, enrich the lives of individuals with disabilities, increase the employment opportunities of individuals with disabilities, and enable people with severe disabilities to live more independently with their families or in their communities.

NIDRR provides leadership and support for a comprehensive and coordinated national and international program of

rehabilitation research. Working with both federal and private-sector organizations, NIDRR develops and implements long-range plans for rehabilitation research and coordinates the work of all federal agencies supporting or conducting such research. NIDRR has also awarded grants to provide technical assistance to those with rights and duties under the ADA.

U.S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035-6738
ADA Information Line: (800) 514-0301 (voice); (800) 514-0383 (TDD)
To access publications on the ADA electronically: (202) 514-6193 (electronic bulletin board)

The U.S. Department of Justice (DOJ) enforces ADA provisions prohibiting discrimination on the basis of disability in state and local government services (Title II) and in public accommodations and commercial facilities (Title III). DOJ provides technical assistance on the ADA. ADA specialists are available to provide technical assistance on the ADA Information Line 10 A.M. to 6 P.M. eastern time Mondays through Fridays, except Thursdays when the hours are 1 P.M. to 6 P.M. Publications available from DOJ include the Title II and Title III regulations, the *Americans with Disabilities Act Title II Technical Assistance Manual* and the *Americans with Disabilities Act Title III Technical Assistance Manual*, as well as pamphlets and fact sheets explaining responsibilities and rights under Title II and Title III of the ADA.

U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507
ADA Helpline: (800) 949-4232 (voice/TDD)
To order publications: (800) 669-EEOC (voice); (800) 800-3302 (TDD)
For referral to district, field, area and local offices:
(800) 669-4000 (voice); (800) 800-3302 (TDD)

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title I provisions prohibiting discrimination in employment against qualified individuals with disabilities. The EEOC investigates complaints filed by job applicants or employees who believe they have been discriminated against in employment on the basis of disability. The EEOC also provides information, speakers, technical assistance, training, and referral to specialized resources to employers and people with disabilities. Publications available from the EEOC include the Title I regulation, *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, as well as booklets and fact

sheets that explain employer responsibilities and rights of individuals with disabilities.

Architectural and Transportation Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, D.C. 20004-1111
(800) USA-ABLE (872–2253) (voice/TDD)
(800) 993-2822 (TDD)
(202) 272-5434 (voice/TDD)
(202) 272-5449 (TDD)

The Architectural and Transportation Barriers Compliance Board (Access Board) develops accessibility guidelines under Titles II and III of the ADA and enforces accessibility standards under the Architectural Barriers Act (ABA). The Access Board provides telephone assistance and training on technical and scoping requirements for accessibility and offers general technical assistance on the removal of architectural, transportation, and communication barriers affecting people with disabilities. Publications available for dissemination include: *ADA Accessibility Guidelines (ADAAG) for Buildings and Facilities*; an ADAAG checklist for buildings and facilities; and bulletins on technical and design questions related to accessibility, covering such issues as parking, slip-resistant surfaces, visual alarms, detectable warnings, and TDDs.

U.S. Department of Housing and Urban Development
Community Planning and Development
451 7th Street, S.W.
Washington, D.C. 20410-4000
(202) 708-0270 (voice)

The U.S. Department of Housing and Urban Development allocates funds (Community Development Block Grants) to carry out a wide range of community development activities, including access improvements. Decisions on which projects are funded are made by units of general local government and in rural areas, by states in conjunction with units of general local government.

U.S. Department of Transportation
400 Seventh Street, S.W., Room 10424
Washington, D.C. 20590
(202) 366-9305 (voice)
(202) 755-7687 (TDD)

The U.S. Department of Transportation enforces and provides technical assistance concerning the ADA provisions that require nondiscrimination in public (Title II) and private (Title III) mass transportation systems and services. Publications available for dissemination include regulations

concerning transportation for individuals with disabilities and a handbook for implementing complementary paratransit service requirements of the ADA.

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554
(202) 418-0200 (voice)
(202) 632-6999 (TDD)

The Federal Communications Commission (FCC) enforces and provides technical assistance concerning the telecommunication provisions of the ADA (Title IV), which require that companies offering telephone service to the general public offer telephone relay services to individuals who use TDDs or similar devices. The FCC also enforces the requirements for closed captioning of federally produced or federally funded television public service announcements. Publications available for dissemination include the regulations concerning telecommunication services for persons with hearing and speech disabilities and *Telecommunications Relay Service: An Informational Handbook.*

The President's Committee on Employment of People with Disabilities
1331 F Street, N.W., Third Floor
Washington, D.C. 20004
(202) 376-6200 (voice)
(202) 376-6205 (TDD)

The President's Committee on Employment of People with Disabilities (Committee) provides information and advice on the employment of people with disabilities. The Committee conducts training conferences on the ADA, and works with state organizations (President's Committee Partners) to increase employment opportunities for people with disabilities. The President's Committee Partners provide technical assistance on employment and information on auxiliary aids and services to ensure effective communication. The Committee funds the Job Accommodation Network, which provides free consultation on specific accommodation issues. The Committee provides a range of informational materials on the ADA and practical guidance on job analysis, job accommodation and modification, hiring and training people with disabilities, job placement, supervising employees with mental retardation, vocational rehabilitation, disability legislation and regulations, and working with people who have specific disabilities such as multiple sclerosis, blindness, diabetes, cerebral palsy, and cystic fibrosis.

DISABILITY AND BUSINESS TECHNICAL ASSISTANCE CENTERS

The National Institute on Disability and Rehabilitation Research has funded a network of ten regional Disability and Business Technical Assistance Centers (DBTACs). The DBTACs provide information, training, and technical assistance to businesses and other entities with responsibilities under the ADA and to people with disabilities. The DBTACs act as a "one-stop" central source of information, direct technical assistance, training, and referral on ADA issues concerning employment, public accommodations, public services, and communications.

A list of the ten technical assistance centers is provided below. You can contact any DBTAC by dialing the telephone number listed, or dial 1-800-949-4ADA (voice/TDD) to be automatically connected to the DBTAC in your region.

New England DBTAC (Region I: CT, ME, MA, NH, RI, VT)
University of Southern Maine
Muskie Institute of Public Affairs
145 Newbury Street
Portland, ME 04101
(207) 874-6535 (voice/TDD)
(207) 874-6529 (fax)

Northeast DBTAC (Region II: NJ, NY, PR, VI)
United Cerebral Palsy Association of New Jersey
354 South Broad Street
Trenton, NJ 08608
(609) 392-4004 (voice)
(609) 392-7044 (TDD)
(609) 392-3505 (fax)

Mid-Atlantic DBTAC (Region III: DE, DC, MD, PA, VA, WV)
Endependence Center of Northern Virginia
2111 Wilson Boulevard, Suite 400
Arlington, VA 22201
(703) 525-3268 (voice/TDD)
(703) 525-6835 (fax)

Southeast DBTAC (Region IV: AL, FL, GA, KY, MS, NC, SC, TN)
United Cerebral Palsy Association
1776 Peachtree Street, Suite 310N
Atlanta, GA 30309
(404) 888-0022 (voice/TDD)
(404) 888-9001 (fax)

Great Lakes DBTAC (Region V: IL, IN, MI, MN, OH, WI)
1640 West Roosevelt Road (M/C626)
Chicago, IL 60608-6902
(312) 413-1407 (voice/TDD)
(312) 413-1856 (fax)

Southwest DBTAC (Region VI: AR, LA, NM, OK, TX)
The Institute for Rehabilitation and Research (TIRR)
2323 S. Shepherd Boulevard, Suite 1000
Houston, TX 77019
(713) 520-0232 (voice/TDD)
(713) 520-5785 (fax)

Great Plains DBTAC (Region VII: IA, KS, MO, NE)
University of Missouri at Columbia
4816 Santana Circle
Columbia, MO 65203
(312) 882-3600 (voice/TDD)
(312) 884-4925 (fax)

Rocky Mountain DBTAC (Region VIII: CO, MT, ND, SD, UT, WY)
Meeting the Challenge, Inc.
3630 Sinton Road, Suite 103
Colorado Springs, CO 80907-5072
(719) 444-0252 (voice)
(719) 444-0268 (TDD)
(719) 444-0269 (fax)

Pacific DBTAC (Region IX: AZ, CA, HI, NV, PB)
Berkeley Planning Associates
440 Grand Avenue, Suite 500
Oakland, CA 94610
(510) 465-7884 (voice)
(510) 465-3172 (TDD)
(510) 465-7885 (fax)

Northwest DBTAC (Region X: AK, ID, OR, WA)
Washington State Governor's Committee
605 Woodland Square Loop SE
Olympia, WA 98507-9046
(360) 438-4116 (voice/TDD)
(360) 438-4014 (fax)

OTHER

Adaptive Environments, Inc.
374 Congress Street, Suite 301
Boston, MA 02210
(617) 695-1225 (voice/TDD)
(800) 893-1225 (voice/TDD)

Founded in 1978 as a nonprofit organization, Adaptive Environments develops and conducts educational programs and produces publications on accessibility (including award-winning design guidelines). Adaptive Environments is currently managing a three-year grant to help public schools comply with the ADA. Through this grant, training, publications, and limited technical assistance will be provided to interested school districts. Adaptive Environments also manages a Universal Design Information Network on the Internet.

Job Accommodation Network
West Virginia University
P.O. Box 6080
Morgantown, WV 26506
(800) 526-7234 (accommodation information) (voice/TDD)
(800) ADA-WORK (ADA Information) (voice/TDD)
(800) DIAL JAN (ADA information) (computer modem)

The Job Accommodation Network (JAN) is funded by the President's Committee on Employment of People with Disabilities. Through telephone consultation with professional human factors counselors, the JAN provides information and advice to employers and people with disabilities about custom job and worksite accommodations.

The JAN performs individualized searches for workplace accommodations based on the job's functional requirements, the functional limitations of the individual, environmental factors, and other pertinent information. The JAN assists employers and individuals with disabilities in the use of a variety of public programs. ADA Work Line, a toll-free hotline, is staffed by people experienced in discussing the application of the ADA, especially as it relates to accommodation and accessibility issues.

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